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**Interpreting Justice:
A Critique of Free Market Fairness**

By: Bridgette Lemoine

Submitted in Partial Fulfillment
of the
Prerequisite for Honors
in the Department of Philosophy

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Introduction

What does justice require? Is it equality - the ability to pursue your life goals on an equal footing with your fellow citizens, to live as a respected and valued member of your collective society? Is it freedom - the ability to live your life autonomously, free from the interference of other citizens and the state? Or is it some combination of the two - a shared respect for the equal status of citizens *and* their autonomously chosen life plans? Deliberations about these questions have led to myriad philosophical schools of thought, each one advocating for its own unique conception of justice.

One philosophical tradition that has arisen out of this debate is high liberalism. Championed by distinguished philosopher, John Rawls, high liberals argue in favor of a conception of justice as fairness. On this view, individuals are conceptualized as free and equal democratic citizens, endowed with the moral powers of reasonableness and rationality, which enable them to pursue their life goals while simultaneously respecting the needs of other citizens to do the same.¹ Against this backdrop, Rawls assumes that what a just society requires is that people be free to develop their reasonable and rational capacities without arbitrary differences in social position and natural talents unfairly favoring some citizens over others. For this reason, Rawls proposes two principles of justice to guide the formulation of the basic political, social and economic institutions of society. These principles are:

¹ See p.8 for expanded explanation of these terms.

1.Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

2.Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). ²

In applying these principles, Rawls advocates for government intervention in the economy so as to guarantee that all citizens, regardless of their class or natural abilities, are able to grow as reasonable and rational citizens through systems of publicly funded education, and careers open to all.

An additional characteristic of Rawls' view is that it affirms only a limited set of economic liberties as essential for the development of citizens' moral powers. For Rawls and his many supporters, the only economic liberty that democratic citizens need in order to live full and meaningful lives is "the right to hold and to have exclusive use of personal property."³ More extensive economic liberties including, "certain rights of acquisition and bequest, as well as the right to own means of production and natural resources" and "the right to property as including the equal right to participate in the control of the means of productions and of natural resources, both of which are to be socially, not privately owned" are not deemed basic because they are not, on Rawls' account, needed for all citizens to fully develop and exercise their moral powers. ⁴

In stark contrast to the high liberal conception of justice are the libertarian and classical liberal conceptions. These philosophical schools argue that justice

² Rawls, John. JAF, p.42.

³ Rawls, JAF, p.114.

⁴ Rawls, JAF, p.114.

requires that the basic structure of society focus on protecting individuals' autonomy rather than worrying about concerns of equality. Libertarians and classical liberals, in conceptualizing individuals as self-owners and utility seekers (respectively), hope to maximize the freedoms of citizens so that each person may seek their own ends in their own way.⁵ Following from their strong commitment to individual freedom, both libertarians and classical liberals advocate for the basic structure of society to be more capitalistic and require a more extensive set of economic liberties, including the right to own a business and negotiate one's terms of employment. This is because on their account, these liberties represent "essential parts of freedom."⁶

The divide between high liberals and libertarians/classical liberals, is standardly thought to be an unbridgeable one. However, in his recent book, Free Market Fairness, John Tomasi proposes an innovative middle ground solution to the question of what justice requires. Rather than seeing thick economic rights and social justice as competing values, Tomasi argues that with his market-democratic interpretation of Rawls' theory of justice as fairness, economic liberties and social justice, free markets and fairness, can be united.

⁵ The idea of self-ownership is thought to have originated with John Locke who wrote: "Every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. (Locke, John, and C. B. Macpherson. *Second Treatise of Government*. Indianapolis, IN: Hackett Pub., 1980. Print. p.19). Libertarians believe that protecting self-ownership is a core interest of individuals. In contrast, the idea of individuals as utility seekers, introduced by Jeremy Bentham, argues that what individuals desire most (and what societies should therefore aim to secure) is maximization of happiness. (Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation* (Dover Philosophical Classics). Dover Publications Inc. p. 1 January 2009.) Classical liberals argue for a tight connection between utility maximization and freedom.

⁶ Tomasi, FMF, p. xi.

Tomasi's hybrid view mimics the capitalist call for a more substantive set of basic economic liberties. However, unlike libertarianism or classical liberalism, it seeks to justify these liberties in the same way that Rawls justifies his own list of basic liberties. Namely, Tomasi argues that the economic liberties are basic because they are essential for the development of the moral powers of citizens.

In addition to changing Rawls' first principle of justice to include the economic liberties in Rawls' list of other basic liberties, Tomasi proposes a second significant alteration to Rawls' theoretical framework. Specifically, he proposes making Rawls' second principle of justice put substantially more emphasis on maximizing citizens' holdings of income and wealth. Tomasi argues that this change will allow individuals to more effectively pursue their own life plans by allowing them to put their increased shares of income and wealth towards whatever goals or aims are most important to them.

In the course of this thesis I will work to evaluate Tomasi's claims that his market democratic interpretation of justice as fairness offers the type of valuable changes that he suggests it does. In my first chapter I will flesh out the essential details of Rawls' view, which define both the scope and limitations of justice as fairness. In my second chapter I will then introduce Tomasi's hybrid alternative to show precisely how his theory purports to marry the libertarian/classical liberal value of free markets to the high liberal value of fairness. Chapter 3 will focus on the content changes that Tomasi makes to Rawls' first principle of justice. Here I will argue that Tomasi's economic liberties should not, as Tomasi suggests, be deemed basic; since, they do not meet the same standard of significance as do Rawls' other

basic liberties. In chapter 4, I will raise two additional problems with Tomasi's view, both relating to Rawls' second principle of justice. The first is a problem that arises from Tomasi's recommendation that citizens prioritize the economic liberties over the second principle of justice. The second problem critiques Tomasi's decision to emphasize the value of income and wealth over other values that are equally, if not more, important to the development of democratic citizens' moral powers. I will conclude by arguing that, overall, Rawls' original theory is preferable to Tomasi's market democratic interpretation, even though certain nuances of Tomasi's theory are valuable in their own right.

Chapter 1. **Rawls' Theory of Justice**

"Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."

— John Rawls, *A Theory of Justice*

1. A Theory of Justice: Defining the Democratic Citizen

In 1971 John Rawls published his seminal work, A Theory of Justice, one of the most influential accounts of liberal political philosophy ever written. In this work, Rawls outlines his theory of justice as fairness, which sets out to determine and support a set of principles of social justice. Fundamentally, this theory follows from the assumption of a democratic society conceptualized as a fair system of cooperation between free and equal citizens. As an essential component of this theory, Rawls ascribes to democratic citizens two essential powers of moral personality: reasonableness and rationality.⁷ Reasonableness in this Rawlsian context refers to having a "sense of justice" (i.e. a disposition to act fairly towards others) while rationality refers to having "a capacity for a conception of the good" understood as the ability to select, revise and pursue over time an autonomously chosen plan of life.⁸

What makes these powers so constitutive of a democratic citizen is that they are both essential for generating a system of fair cooperation. Rationality provides meaning and motivation for cooperation: it is our ability to select, revise and pursue

⁷ Arnold, Samuel. "Putting Liberty in Its Place: High Liberalism Without the Liberalism." Putting Liberty in Its Place: High Liberalism Without the Liberalism. Academia.edu, n.d. p.2.Web. 20 Oct. 2015.

⁸ Freeman, Samuel, "Original position", The Stanford Encyclopedia of Philosophy (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2014/entries/original-position/>>.

the things that matter to us that incentivizes us to cooperate with others in order to reach our goals and pursue our many conceptions of the good. Likewise, reasonableness is an essential attribute of democratic citizens because it guarantees that citizens will follow the rules that we, living in cooperation with one another, “accept and regard as properly regulating [our] conduct.”⁹ In simpler terms, rationality can be thought of as ensuring the cooperative component of fair cooperation, while reasonableness ensures the fairness component.

It follows from this conception of a democratic citizen that a just and fair society will arrange its institutions in such a way as to respect each citizen as a moral, self-governing agent engaged in a cooperative venture with other, equally worthy, moral agents.¹⁰ So, for a society to be just it must allow these two moral powers of reasonableness and rationality to flourish. Moreover, because democratic citizens are necessarily presumed to be free and equal, societal institutions must not discriminate between people on the basis of their race, gender, religion, class of origin, or their own particular conception of the good life, for this would bias the scales of justice unfairly.

2. The Original Position and The Veil of Ignorance

To determine precisely which institutions a society would need in order to create this fair and just outcome is a challenging task. For, in addition to democratic citizens possessing the two moral powers of rationality and reasonableness, they also possess their own lifestyles that may not be compatible with the lifestyles of others. For example, a single mother from Jefferson County, Mississippi may not

⁹ Arnold, PL, p.6.

¹⁰ Arnold, PL, p.6.

view the same societal institutions as fair as may a wealthy stockbroker from the Upper East Side of Manhattan. As a solution to this problem, Rawls introduces a thought experiment known as the original position, which seeks to pick out the principles of cooperation that free and equal citizens would agree to under fair conditions, removed from their own biased notions of the good life. This thought experiment aims to secure the three fundamental interests of democratic citizens: 1) pursuing a particular rational plan of life, 2) exercising and developing the moral power of reasonableness and 3) exercising and developing the moral power of rationality.¹¹

Under this hypothetical situation, individuals are asked to consider what principles are required of social justice in the abstract, rather than worrying over which principles would best fit their own particular ends. To aid in this effort, Rawls imposes a veil of ignorance on all parties involved, thus ensuring that each citizen can make their determination about what is fair without the influence of arbitrary factors affecting their decision. Behind this veil of ignorance, no one has any knowledge of his or her race, ethnicity, class, gender, age etc. Resultantly, the aforementioned New York stockbroker, while under the veil of ignorance, would refrain from claiming that huge tax cuts are essential for justice, since the stockbroker herself could just as easily turn out to be a single mother from Mississippi who would benefit from the welfare system that taxes help to support once the veil has been lifted. The veil of ignorance thus ensures that members in the original position recognize society as composed of persons who each have differing

¹¹ Rawls, JAF, p.110.

conceptions of the good that require a set of all-purpose “primary goods,” (see page 15) in order to pursue their various life plans.¹²

Importantly, the veil of ignorance does not deprive parties in the original position of all information from which to settle their determinations about the principles of justice. Rather, Rawls takes them to be aware of certain general facts about human society, in addition to their having a thorough (general) understanding of the three fundamental interests. This additional information includes “knowledge of the relatively uncontroversial laws and generalizations derivable from economics, psychology, political science, and biology and other natural sciences.”¹³ Beyond this, members in the original position also know about “the circumstances of justice—moderate scarcity and limited altruism—as well as the desirability of the “primary social goods” that are needed to live a good life and to develop their “moral powers.””¹⁴

One additional point about the original position is that the principles and institutions derived from it have a limited scope, applicable only to a well-ordered society. This means that Justice as Fairness is only supposed to function at the level of ideal theory, for which it is assumed that “everyone strictly complies with, and so abides by, the principles of justice.”¹⁵ At the institutional level, a regime type is understood as recognizing the principle of justice at the level of ideal theory if the regime type 1) aims at these principles and 2) includes arrangements that seek said

¹² Rawls, JAF, p.15.

¹³ Freeman, OP.

¹⁴ Freeman OP.

¹⁵ Rawls, JAF, p.13. This first requirement follows from the assumption that “if a regime does not try to realize certain political values, it will not in fact do so” while the second excludes regimes that aim at justice in a way that is incompatible with “basic laws of human behavior and social and economic organization” since no democratic human society can function in such a way (Rawls, JAF, 137).

principles in a way that is compatible with the general laws of political sociology.¹⁶

By limiting the scope of Justice as Fairness to the level of ideal theory Rawls is effectively theorizing about “what a perfectly just, or nearly just, constitutional regime might be like, and whether it may come about and be made stable under the circumstances of justice.”¹⁷

3. Basic Structure of Society

With this information in hand, members in the original position set out to answer what social justice demands of the basic structure of society.¹⁸ The principles of justice aim at structuring only the basic institutions of society rather than trying to regulate all social institutions, because the basic institutions are those that are needed to ensure the full development and exercise of the moral powers. As Samuel Freeman puts it, “What makes these [basic] institutions and their arrangement the first subject for principles of social justice is that they are all necessary to social cooperation and moreover have...profound influences on our situations, aims, characters, and future prospects.”¹⁹ The institutions that fit the bill of being “basic” in this sense are “the political constitution and framework for the legal system; the system of trials for adjudicating disputes; the norms of property, its transfer, contractual relations...and finally norms that define and regulate permissible forms of the family.”²⁰

¹⁶ Arnold, Samuel. “Right-wing Rawlsianism: A Critique.” *Journal of Political Philosophy*, 21: 382–404. doi: 10.1111/jopp.12001.p.391.(2013).

¹⁷ Rawls, JAF, p.13.

¹⁸ Rawls, JAF, p.10.

¹⁹ Freeman, OP.

²⁰ Freeman, OP.

Many social institutions that fall outside of the realm of the basic structure of society may still be deemed important for some individuals and cultures, such as the institution of religion. However, because these institutions are not necessary to guarantee the full development and exercise of the moral powers for all citizens, they are not the primary focus of the principles of justice. Instead, the principles of justice focus solely on the aforementioned basic institutions and so only affect other non-basic social institutions indirectly.

In summation, the original position guides parties behind the veil of ignorance to select principles of justice for the basic structure of society that are fair and that would allow them to develop their three fundamental interests: the two moral powers of personality and their own particular conception of the good, whatever that turns out to be once the veil of ignorance has been lifted. Furthermore, this decision once formed is nonnegotiable, meaning that whatever principles are chosen while behind the veil will remain in effect, regardless of what a person's particular conception of the good turns out to be once the veil of ignorance has been lifted.²¹ In this way, parties in the original position must weigh their options heavily, since the future fulfillment of their fundamental interests depends wholly on the outcome of this deliberation.

5. Maximin Rule

With these limitations explained, we can now return to the original position to see what else is required to reach a set of principles that will simultaneously allow the moral powers of personality to thrive while also maximizing the amount

²¹ Rawls, JAF, p.16.

of opportunities each individual has for pursuing his or her own particular conception of the good, whatever that conception is revealed to be once the veil of ignorance has been lifted. But how exactly might a reasonable, and rational individual set about choosing principles of justice when confronted with this hypothetical scenario?

Rawls theorizes that in the face of such uncertainty—being just as likely to find yourself the CEO of a Fortune 500 company as the fry cook at your local fast food chain restaurant—parties in the original position would choose to apply the maximin rule for picking between alternative principles of justice. The maximin rule directs individuals in the original position “to identify the worst outcome of each available alternative and then to adopt the alternative whose worst outcome is better than the worst outcomes of all the other alternatives.”²²

Rawls takes this maximin rule to be the most rational tool for individuals in the original position to use because unlike other day-to-day deliberations, the judgment from the Original position is irrevocable once made. This means that regardless of whether or not someone is more risk-seeking or more risk-averse in their everyday considerations, they would still tend towards a more risk-averse approach when deliberating about how to form their societal institutions from the original position. Individuals in the original position have their entire moral personhood hanging in the balance, and no way of knowing whether or not they will fill the role at the top, at the bottom, or somewhere in between. Faced with such

²² Rawls, JAF, p.97.

uncertainty, and fearing for the worst-case scenario, Rawls reasonably assumes that these individuals would rationally choose to apply the maximin rule.²³

6. Principles of Justice vs. Principle of Average Utility

With this rule guiding the deliberations of parties in the original position, Rawls' next move is to identify which principles in particular guarantee this best, worst outcome. For this, Rawls proposes the following two principles:

1. Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).²⁴

These principles are designed to ensure that individuals in the original position can procure a set of "primary goods" "that every rational man is presumed to want" i.e. that are essential for the full development of the two moral powers of reasonableness and rationality and that offer the greatest opportunity for satisfying citizens' own conception of the good life, whatever they discover that conception to be.²⁵ The list of goods Rawls takes to be primary includes:

1. Basic Liberties (including the political liberties, liberty of conscience and freedom of association, freedom and integrity of the person and the rights covered by the rule of law);²⁶

²³ Rawls, JAF, p. 109n33.

²⁴ Rawls, JAF, p.42.

²⁵ Rawls, TJ, p.62.

²⁶ The Basic rights are helpfully fleshed out by Thomas Pogge in the following way:

1. Political liberties: freedom of thought and of political speech, freedom of the press, freedom of assembly and the right to vote and hold public office.
2. Liberty of conscience and freedom of association, which between them cover freedom of religion.

2. Freedom of movement and occupational choice;
3. Powers and prerogatives of office;
4. Income and wealth; and,
5. The social bases of self-respect.²⁷

Rawls' first principle governs the first two sets of goods; his second principle governs the remainder.

One alternative to Rawls' principles of justice is the principle of average utility, which recommends that the basic structure of society be designed so as to produce the highest level of utility or welfare averaged among all citizens.²⁸ Comparing these two options from the perspective of a party in the original position, the principles of justice are the better choice because they guarantee the better worst-case scenario. Inferring from the contents of the principles of justice, it is evident that no matter which position one holds, once the veil of ignorance has been lifted, every person will, at the very least, have their most prized liberties protected, thus ensuring the effective development and exercise of their two moral powers, and to a greater extent, their ability to pursue their own particular conception of the good life.

Conversely, the principle of average utility could allow individuals to have their basic rights restricted if such restriction would result in greater

-
3. Freedom and integrity of the person, which are incompatible with slavery and serfdom, and which also include freedom from psychological oppression...and the right to hold personal property (not including rights to inheritance, rights to hold personal property in means of production and natural resources, or rights to share collective control of means of production and natural resources.
 4. The rights covered by the rule of law: protection from arbitrary arrest and seizure, habeas corpus, the right to a speedy trial, due process, and uniform procedures conducted according to publicized rules. (Pogge, Thomas, and Michelle Kosch. John Rawls: His Life and Theory of Justice. Oxford: Oxford UP, p.83. 2007. Print.)

²⁷ Pogge, JR, p.73.

²⁸ Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/win2013/entries/rawls/>>.

overall social welfare. In essence, this principle could permit a subset of society to be forced into performing all of society's most laborious tasks so that the majority could live lavishly. Someone in the original position would clearly fear such an outcome since he or she could just as likely be the one forced into compulsory servitude as the one privileged to the high-life.

From this Rawls concludes that since parties in the original position "would never put their basic rights and liberties in jeopardy so long as there was a readily available and satisfactory alternative" they would, acting in accordance with the maximin rule, choose the principles of justice over the principle of average utility.²⁹

7. Principles of Justice vs. System of Natural Liberty

Beyond their desire to have their basic liberties protected, individuals in the original position have an additional desire to have their other primary goods, including "powers and prerogatives of office, income and wealth and the social bases of self-respect" fairly distributed. To prevent unfair distributions, individuals in the original position would desire an additional restriction, the second principle of justice, to cover these goods. An alternative to the second principle of justice is "the system of natural liberty," which picks out free market institutional arrangements and "careers open to talents."³⁰

At the outset, the system of natural liberty may seem just since the requirement of careers open to talents ensures that society begins with

²⁹Rawls, JAF, p.102.

³⁰ Rawls, TJ, p.72.

individuals having the same formal opportunity to go after the positions that reap the most social and economic rewards. However, overtime, those who do win the better positions in society also win a greater share of resources. And, with no compulsory limitation placed on how many resources or primary goods they may obtain, inequality in wealth would grow rampant. Also, under this system there is no guaranteed minimum income that those who do not attain the enviable positions may receive; because, all they are guaranteed by the first principle of justice is that their basic rights are protected.

This result is impermissible on Rawls' account because it implies that in the system of natural liberty, social positions although formally open to all, are not practically open to all; since, differences in life prospects can be affected by social class, e.g. someone born into a wealthy family can more easily attain success than someone born into a poor family.³¹ Conversely, by instituting Rawls' *fair* (as opposed to merely formal) equality of opportunity principle, members in the original position could demand that resources be provided to ensure that everyone has access to education and training so that they can obtain the skills society deems important for success, regardless of the social class they are born into.

However, Rawls is quick to point out that this would not solve the whole problem. For, even if fair equality of opportunity eliminates the possibility of certain inequalities due to social position, "it still permits the

³¹ Rawls, TJ, p.73.

distribution of wealth and income to be determined by the natural distribution of abilities and talents.”³² This is because someone who only possesses the native talents to work a minimum wage job would not, in virtue of having fair equality of opportunity protected, all of a sudden be able to become a hedge fund manager. Instead, if their natural capacities were limited so that they can only ever do manual labor, a party in the original position would want to at least guarantee the highest minimum wage possible. For this reason, Rawls believes that members in the original position would include the difference principle as a component of the principles of justice.

Adopting the default assumption that what justice requires is an equal distribution of social primary goods, Rawls adds the difference principle to stipulate that, if introducing inequalities in the distribution of these goods maximally improves the position of the worst-off, then that inequality is permissible. So, if paying Cynthia more money than Marc incentivizes her to make great business deals, which in turn stimulate the economy and thereby raise Marc’s wages as well as Cynthia’s; this inequality would be mutually beneficial and permissible under the difference principle. As Rawls puts it, “the greater expectations allowed to entrepreneurs encourages them to do things which raise the long-term prospects of [the] laboring class. Their better prospects act as incentives so that the economic process is more

³² Rawls, TJ, p.73-4.

efficient.”³³ In this way, social and economic inequalities are forced to abide by an “all for one and one for all” format, such that if the elite are advantaged then so too are the poor.

8. Priority of the Principles of Justice

Having shown why the principles of justice are preferred to both the principle of average utility and a system of natural liberty, I will now move on to explain the priority relationship of the first principle of justice over the second and the priority of the fair equality of opportunity principle over the difference principle.

8.1 Priority of the First Principle

The reason Rawls prioritizes the first principle of justice over the second is because a person cannot fully develop her capacities as a rational and reasonable citizen without having her basic liberties protected. Granting the first principle priority means that the myriad basic structures of society that *could* be chosen are to be judged first and foremost based on “the distribution of basic rights and liberties each is expected to produce,” regardless of the distribution of the other primary goods.³⁴ Whichever structure achieves the maximal distribution of basic liberties is better, on Rawls’ account than all others, because basic liberties are more important for satisfying our fundamental interests than are the other primary goods.³⁵

8.2 Priority of Fair Equality of Opportunity

³³ Rawls, TJ, p.78.

³⁴ Pogge, JR, p.79.

³⁵ Rawls, JAF, p.46.

If it turns out that two structures both ensure that all of our basic liberties will be guaranteed, then Rawls says, we should pick whichever structure best satisfies the fair equality of opportunity principle. If the difference principle were to be considered on its own, it might conceivably permit structures that make it hard for motivated and talented individuals born at the low end of the income spectrum to attain good education and career opportunities, because someone of equal talent and motivation could be born into a family that has more connections and wealth and therefore can climb the social ladder faster. By mandating that fair equality of opportunity be given priority over the difference principle, Rawls rules out such discriminatory and unfair practices.³⁶

8.3 Priority of the difference principle

Only after the first principle of justice and fair equality of opportunity have been satisfied can the difference principle come into play. This is not to say that the difference principle is not important; but rather, that a society cannot hope to be just if it does not at least guarantee the basic liberties and fair equality of opportunity. Like the other two principles, the difference principle concerns the distribution of key primary goods that are essential for the development of the moral powers. They are: powers and prerogatives of office, income and wealth and the social bases of self-respect. This principle thus recommends that if two competing structures have already secured the basic rights and fair equality of opportunity, then the preferred

³⁶ Rawls, JAF, p.43.

structure is the one that maximizes the distribution of these three additional goods to the worst-off.³⁷

9. Regime Types

Having established what the principles of justice are and the priority relationship between them, the next question Rawls must answer concerns which institutional arrangements society must impose in order to make sure these principles are properly satisfied. Although many institutional arrangements could follow from these principles, Rawls only expands upon two of particular merit: property-owning democracy and liberal (democratic) socialism.

For Rawls, property-owning democracy recognizes a limited range of libertarian commitments by allowing for restricted rights to the private ownership of productive capital. However, unlike a capitalist-welfare state, economic power is not narrowly concentrated to an elite class, but is instead more broadly distributed.³⁸ One prominent goal of property-owning democracy regimes is that they seek to limit distributional exchanges between generations by imposing a steep inheritance tax. As Rawls states, “the purpose of these levies and regulations is not to raise revenue...but gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity.”³⁹

Property-owning democracy also establishes a system of publicly funded educational institutions. Through this guarantee, property-owning democratic

³⁷ Rawls, JAF, p.48.

³⁸ Pogge, JR, p.133.

³⁹ Rawls, TJ, p.277.

institutions enable citizens to pursue their own conceptions of the good life “in such a way that they can participate, fully and as equals, in the economic and social life of their society and are motivated to do so by their secure sense of being, and being seen and treated as, equal citizens.”⁴⁰ Other essential programs are ensured through a similar process of public funding and subsidization, including government funding for political campaigns and possibly a nationalized health care program.⁴¹

The second regime type that Rawls proposes calls for a completely different set of institutions. Liberal democratic socialism forbids ownership of private productive property but permits collective, democratic ownership of production. In this way, innovation is fueled by competing, worker-managed firms, which vie for economic prominence within a market socialist economy.⁴² However, in terms of all other institutional aspects, including education, health care, and political funding, liberal democratic socialism would closely parallel property-owning democracy by relying on tax-funded welfare programs.⁴³

10. Summary

In outlining the principles of justice and proposing the aforementioned institutional arrangements of property-owning democracy and limited democratic socialism, Rawls has methodically worked out an answer to the question of what justice requires. In what follows I will present a new interpretation of Rawls’ theory of Justice as Fairness, which modifies in important ways the content of Rawls’ first principle of justice and the requirement of the second principle of justice to result in

⁴⁰ Pogge, JR, p.134.

⁴¹ Tomasi, FMF, p.114.

⁴² Tomasi, FMF, p.115.

⁴³ Tomasi, FMF, p.115.

a far more capitalistic interpretation of justice as fairness. To what extent this new “free market” interpretation is consistent with Rawls’ justificatory framework will be reviewed in the chapters to come.

Chapter 2. **Tomasi's Hybrid Alternative**

"Increases in prosperity increase the value of liberty...in many ways, wealth fuels the experience of freedom itself"

- John Tomasi, *Free Market Fairness*

1. Interpreting Justice as Fairness

In his book Free Market Fairness, John Tomasi takes up Rawls' theory of Justice as Fairness and reinterprets it from what he terms a "market democratic" perspective. This interpretation dramatically extends Rawls' theory to recognize economic liberties and free markets as essential for ensuring the full development and exercise of the two moral powers of personality. Tomasi's interpretation integrates two seemingly conflicting philosophical theories into one new liberal political theory; by bringing together the "high liberal" demand for social justice and fairness with the libertarian and classical liberal demand for free markets and private economic liberties.

On the one hand, Tomasi seeks to maintain many of Rawls' substantial high liberal, or left-liberal values, such as the importance of basic liberties in defining social justice and the requirement of respecting the self-authorship of all citizens by ensuring that they are able to fully develop their moral powers of reasonableness and rationality. On the other hand, Tomasi disagrees with Rawls' limited list of basic liberties and the high liberal, institutional demand that society ought to allow for government involvement in the economy and avoid laissez-faire capitalism.

The reason Tomasi renounces these high liberal values is that he sees democratic legitimacy as requiring that a more substantial set of economic liberties be included in Rawls' top tier of primary goods. For Tomasi, this more extensive list

includes the right to negotiate one's own specific terms of employment and the right to own private productive property.⁴⁴ By demanding that this more robust set of economic liberties be included in Rawls' list of basic liberties, Tomasi is effectively challenging the Rawlsian assumption that "laissez-faire capitalism...secures only formal equality and rejects both the fair value of the political liberties and fair equality of opportunity."⁴⁵

To help motivate his contention that ownership of private productive property is essential for the full development of our moral character, Tomasi provides us with the example of a high school drop out turned entrepreneur. As the example goes, after dropping out of school Amy works diligently for years, saving up her pennies so that she can acquire a loan and open up her own pet grooming shop, "Amy's Pup-in-the-Tub."⁴⁶ For Amy, owning her own store provides her the economic security and freedom to rely on her own labor rather than making her dependent on the state. Beyond this, Amy's ownership over her property is also valuable in virtue of its relation to her sense of self-identity. As Tomasi puts it, "societies that protect the private ownership of productive property as a basic right increase the range of projects, and the forms of economic relationships, that are available to citizens" by "broaden[ing] the evaluative horizons of citizens."⁴⁷ For these reasons, Tomasi purports to show that ownership of private productive property is essential and basic in the same sense as are Rawls' other basic liberties.

⁴⁴ Tomasi, FMF, p.81.

⁴⁵ Rawls, JAF, p.137.

⁴⁶ Tomasi, FMF, p.66.

⁴⁷ Tomasi, FMF, p.79.

In addition to this, Tomasi suggests that the right to specify one's own terms of employment is also essential for ensuring the full development of one's moral character. His rationale for this is that "if the freedom to choose an occupation is essential to the development of the moral powers" as Rawls suggests it is, then "the freedom to sell, trade, and donate one's labor looks equally essential for the same reason. After all, one is defined by one's workplace experience not simply by *what* profession one pursues."⁴⁸ Hence, for Tomasi, the economic freedom to negotiate one's terms of employment is just as necessary for guaranteeing the two moral powers as are the other basic liberties that Rawls includes in his list.

In the succeeding sections I will contrast and compare Rawls' high liberal theory of justice as fairness with Tomasi's alternative, and determine what these differences mean for Tomasi's theory at the level of both principled and institutional justification.

2. Similarities

In devising free market fairness, Tomasi adopts a very similar theoretical framework to Rawls. Included in this is Rawls' idea of a democratic society as "a fair system of cooperation among citizens committed to respecting one another as responsible self-authors."⁴⁹ To ensure that justice is met in such a society, both free market fairness and justice as fairness aim at developing the basic structure of society in such a way as to enable citizens to develop and exercise their two moral powers of reasonableness and rationality.

⁴⁸ Tomasi, FMF, p.77.

⁴⁹ Tomasi, FMF, p.88.

In addition to these theories sharing the same end goal, free market fairness also mirrors justice as fairness in its use of the Rawlsian distribution criterion, or difference principle. Both Tomasi and Rawls allow a divergence from an egalitarian distribution of the “DP” primary goods, but only on the condition that that unequal distribution improves the condition of the worst-off members of society.⁵⁰

A third similarity between free market fairness and justice as fairness is that both theories are presumed to operate at the level of ideal theory. As a reminder to the reader, ideal theory uses a two-part test to determine the extent to which a potential regime type may meet the requirements of justice. First, it must have justice as its goal. Second, the regime type must be possible from a sociologically realistic perspective.⁵¹ Anything that falls within these two constraints is justifiable by ideal theory standards, regardless of whether or not transition to it is feasible from our current institutional arrangement. This is a way of preventing the requirements of justice from being “tainted” by practical considerations that are fundamentally, morally irrelevant and that risk privileging the status quo. It also means (as will become apparent later) that both Rawls’ and Tomasi’s institutional recommendations are immune to certain empirically oriented objections.

3. The Range of Self-Authorship

As has been said, Tomasi believes that a thick conception of economic liberties is essential for justice. By this he means that in order for citizens to fully exercise and develop their moral powers, their economic liberties in conjunction with their other basic liberties must be protected. To better understand how a

⁵⁰ Tomasi, FMF, p.187.

⁵¹ Tomasi, FMF, p.225.

thicker conception of economic liberties could be viewed as essential for guaranteeing the development of these two moral powers, Tomasi introduces the idea of a range of self-authorship. The upper limit of this range suggests that if the economic liberties are restricted too much, either by extensive economic regulations or high tax rates, then this could prove unbearably onerous to the point of infringing on individuals' abilities to practice responsible self-authorship and by extension, their ability to exercise their moral powers. Thus, justice requires the protection of economic liberties.

Conversely, the range of self-authorship cannot allow the economic liberties to have too much free reign, since doing so would prohibit any form of redistribution of income and wealth, thus making any kind of tax-funded, social safety net impermissible. This in turn would result in some individuals incurring extreme levels of poverty and limited opportunities for education, which likewise threaten the development of the two moral powers.⁵² Thus, justice requires that the protection of the economic liberties be restricted while also being considered basic.⁵³ In this way, Tomasi takes the economic liberties to be essential for individuals to practice their responsible self-authorship. But he does not go so far as to claim that the economic liberties are invariant across all social conditions, as say a Libertarian might. For Tomasi, the range of self-authorship exists on a sliding scale that varies across different sociological, economic and political settings. For example, one sociological setting may result in economic liberties being more essential for realizing self-authorship than another and as a result, in this society

⁵² Tomasi, FMF, p.94.

⁵³ Tomasi, FMF, p.91.

extensive tax-funded social welfare programs would infringe on citizens' right to their own income.⁵⁴

4. Market Democratic Regimes

At the institutional level, Tomasi hopes to show that his “market democratic” regimes are just as sensitive to the requirements of social justice as are the “social democratic” regimes of property-owning democracy and liberal democratic socialism, which Rawls recommends. However, beyond market democratic institutions simply being on par with Rawls’ social democratic institutions, Tomasi suggests that the market democratic interpretation of social justice, which picks out these market democratic regimes, is in fact superior to Rawls’ social democratic interpretation. Tomasi believes that free market fairness, is morally superior to Rawls’ social democratic, justice as fairness in virtue of the fact that “any conception of liberal justice that diminishes the agency of individuals with respect to the deeply personal economic choices that structure their lives...is defective from the moral point of view.”⁵⁵

Competing with the social democratic regimes of property-owning democracy and liberal democratic socialism are Tomasi’s two market democratic regime types: democratic laissez-faire and democratic limited government. Commonalities between these two market democratic regime types include their joint commitment to limiting government involvement in economic affairs and their acknowledgment that some state involvement is necessary to “create tax-funded

⁵⁴ Tomasi, FMF, p.95.

⁵⁵ Tomasi, FMF, p.105.

safety nets for citizens in great need.”⁵⁶ Additionally, both of these regime types uphold the primary maxim of market democracy that private economic liberties are among the basic liberties of all citizens.⁵⁷

Unlike their social-democratic counterparts, these market democratic regimes steer clear of resolving the issue of ensuring equal opportunity for all by having all educational programs, healthcare programs and legal programs be administered by the government. Instead, these regimes reflect the classical liberal preference for free market competition. For example, in the case of education, market-democratic regimes favor tax-funded voucher programs that would allow individuals in economically dire straits to use vouchers to offset the costs of attending private educational institutions, rather than having highly regulated public schooling systems.⁵⁸ Hence, market democratic regimes favor private-public partnerships, which are supposed to arise naturally from a spontaneous order, rather than favoring direct government involvement.

Democratic laissez faire closely parallels institutional arrangements favored by many libertarian thinkers. This institutional arrangement would allow for an almost entirely privatized education system that would encourage educational innovation by making schools and universities more differentiated and competitive. In addition to privatizing education, a democratic laissez faire regime would allow for only a minimal social safety net. In terms of providing health care to those in need, democratic laissez faire would permit giving individuals living in extreme

⁵⁶ Tomasi, FMF, p.109.

⁵⁷ Tomasi, FMF, p.117.

⁵⁸ Tomasi, FMF, p.109.

poverty a limited amount of money to purchase medical insurance from an open healthcare market, thus ensuring that their medical needs are met while simultaneously allowing for privatized healthcare providers to maintain their autonomy from strict government oversight.⁵⁹

Conversely, democratic limited government has a slightly more liberal bent than does democratic laissez faire in that it allows for a greater degree of government involvement in economic affairs.⁶⁰ In terms of education, democratic limited government could permit tax-funded support for education in a myriad of forms, from “a tax credit for tuition payment, to a safety-net voucher program, to a universal voucher program.”⁶¹ Additionally, democratic limited government could impose certain accreditation requirements so as to ensure that a minimum quality threshold be met at the national level. This regime type is also compatible with a universal guaranteed minimum income and tax-funded grants for health insurance.

Overall, although these two regime types may dispute the best way to go about implementing institutional social service programs, both still preserve the primary requirements of free market fairness. Both democratic laissez-faire and democratic limited government uphold the market democratic maxim that private economic liberties are on par with basic liberties, and that the best way to resolve unjust distributions of primary goods is through a reliance on spontaneous order and the natural efficiency of free markets. However, both of these regimes also admit that markets are imperfect and for this reason, see taxes as necessary for

⁵⁹ Tomasi, FMF, p.116.

⁶⁰ Tomasi, FMF, p.117

⁶¹ Tomasi, FMF, p.117.

supporting government welfare programs “needed to give substantive value to citizens’ rights and liberties.”⁶²

5. Status v. Agency: How Best to Approach Fairness?

Tomasi claims that one of the most notable distinctions between his and Rawls’ theories lies in their respective interpretations of the ultimate goal of justice. Summed up by Tomasi, this distinction can be understood as follows: “Social democracy...interprets fairness as calling on us to prefer institutions that respect citizens as *freely equal*” whereas “market democracy, by contrast, emphasizes the requirement that we seek institutions that treat citizens as *equally free*.”⁶³ In simpler terms, this can be understood as a distinction between social democrats emphasizing the importance of status while market democrats emphasize the importance of agency.

5.1 Agency

Agency, in the context of free market fairness, refers to the capacity of rational citizens “to realistically assess the options before them and, in light of that assessment, to set standards for a life of the sort that each deems worth living.”⁶⁴ This value is reflected in the Libertarian idea of self-ownership, wherein our actions and our property are our own, and as a result, we are free to do with them what we will.⁶⁵ So, if tomorrow I were to go out and gamble away ten thousand dollars, market democrats would view this as an instance of me invoking my agency, or my

⁶² Tomasi, FMF, p.112.

⁶³ Tomasi, FMF, p.193.

⁶⁴ Tomasi, FMF, p.40.

⁶⁵ Refer back to footnote 5 for more on self-ownership.

right as a rational human being to make the life choices that I so desire without interference from the state. Although many would likely view this particular decision as rash, this example is meant only to show that by having my agency protected, I am permitted to freely make decisions that are meaningful to my life ambitions, even if others do not value these choices the same way that I do. The flipside to this is that if I were denied this right to decide for myself how I want to spend my money, my time, or my talents, then on Tomasi's account, I would effectively be stripped of my moral powers, since I would not have the respect of my fellow citizens to freely live my life the way that I desire.

Tomasi's market democratic theory goes a step beyond simply *requiring* that we protect agency. Tomasi also proposes that the best *way* to promote our agency is to allow inequalities in social primary goods only insofar as they maximize the worst-off's holdings of income and wealth—but with a twist. Whereas Rawls' difference principle seeks to maximize the poorest's holdings of income and wealth, powers and prerogatives of office and a sense of self-respect, Tomasi's market democratic difference principle seeks only to maximize the poorest's holdings of income and wealth. Tomasi's justification for leaving out the other "DP" goods is explained more in depth in the succeeding chapter, but is essentially based on the assumption that income and wealth are more essential than are the other DP goods for promoting agency.⁶⁶

By maximizing the level of income and wealth obtained by the worst-off, Tomasi's market democratic difference principle purports to guarantee that the

⁶⁶ See p.60 section 3. Rivalrous DP Goods (PPO v. Income and Wealth)

worst-off have the freedom and flexibility to pursue any number of diverse life plans, whether it be buying a new car or paying for foreign language classes. Tomasi argues this point when he writes, “basic rights and liberties in place, a marketized interpretation [of justice as fairness]...seeks to maximize the material wealth personally controlled by the least fortunate. In doing so, market democracy hopes to provide such people with the largest possible share of fuel to power them as they pursue their diverse and precious plans of life.”⁶⁷ What fairness requires then, is not that everyone has the same share of income and wealth, but that everyone has the same opportunity to use that income and wealth towards their respective ends, and in so doing, allow their agency to flourish.

5.2 Status

Unlike agency, status is a relational value. Our status is dependent on how we view ourselves relative to other members of society and how others view us. For Rawls and other like-minded liberals, we need status in order to fully develop our moral powers because what matters in developing our reasonableness and rationality is not simply that we have the freedom to do whatever we like whenever we like but that we are able to live our lives as free and *equal* citizens in relation to other members of society.

Because seeing ourselves as having equal status with others greatly contributes to our self-respect and sense of self-authorship, what we need are institutions and basic liberties that guarantee not only our right to freedom, but also our right to equality and mutual respect. The role of the basic liberties is to ensure

⁶⁷ Tomasi, FMF, p.194.

equality for all citizens, so as to emphasize our need for status. As Rawls puts it, “In a well-ordered society the need for status is met by the public recognition of just institutions, together with the full and diverse internal life of the many free communities of interests that the equal liberty allows.”

It is worth noting that for social democrats, simply increasing the poorest’s holdings of income and wealth is insufficient to meet the requirements of Rawls’ difference principle.⁶⁸ This is because what Rawls theory demands is for citizens to have “democratic powers to make economic decisions, including democratic powers of control over productive resources” and not *individual* powers to make economic decisions.⁶⁹ Part of the reason Rawls and other like-minded liberals do not single out higher incomes as the main aim of the difference principle, is because they are skeptical about the significance higher incomes and wealth have on expanding citizens’ evaluative horizons. As a corollary, many liberals suggests that once some minimum threshold of income and wealth has been met, what the worst-off really value is “assurances of their standing as political equals” rather than more money.⁷⁰

6. Summary of Major Differences

In summation, at the level of principled justification, free market fairness changes the content of the first principle of justice by adding the right to private productive property and the right to negotiate one’s own specific terms of employment as basic rights. By including these two additional liberties in the top

⁶⁸In Rawls’ words, “The basis of self-esteem in a just society is *not* then one’s income share but the publicly affirmed distribution of fundamental rights and liberties.” (Rawls, TJ, p.544. Italics added for emphasis).

⁶⁹ Tomasi, FMF, p.188.

⁷⁰ Tomasi, FMF, p.190.

tier of primary goods, Tomasi's interpretation of Rawls' first principle of justice, now demands that we consider these economic liberties as on par with the political liberties and liberty of conscience and as prior to the other two tiers of primary goods.

The second alteration Tomasi makes to Rawls' view is in changing the requirements of the difference principle. Tomasi's market democratic difference principle is distinct from Rawls' difference principle because it aims at maximizing only the poorest's holding of income and wealth, as opposed to maximizing the poorest's holdings of powers and prerogatives of office and self-respect as well. Tomasi justifies this alteration on the grounds that his market democratic difference principle more accurately reflects what individual's would desire once their basic rights have already been secured and fair equality of opportunity has already been satisfied. With these two higher-order interests guaranteed, Tomasi thinks that individuals would necessarily prioritize agency and by extension, income and wealth over status and the other two DP goods.

Due to the changes made to the content of the first principle of justice and the altered requirement of the difference principle, the institutional requirements of free market fairness are likewise distinct from Rawls' original recommendations. Whereas Rawls favored property-owning democracies and liberal democratic socialism, Tomasi favors democratic laissez-faire and democratic limited government, since these regime types are more sensitive to economic freedom and growth.

Chapter 3.
The Not-so-Basic, Basic Economic Liberties:
Defending the First Principle of Justice

“In a democracy, the professed equality of rights of all citizens contrasts sharply with the very real inequality of living conditions, and in order to overcome this contradiction it is vital to make sure that social inequalities derive from rational and universal principles rather than arbitrary contingencies.”

- Thomas Piketty, *Capital in the Twenty-First Century*

1. Introduction

In this chapter I will assess the content changes that Tomasi proposes to the first principle of justice. In particular, I will challenge Tomasi’s claim that the economic liberties are basic in the same way as are Rawls’ other basic liberties; since, Tomasi’s economic liberties are not necessary for individuals to develop their two moral powers of reasonableness and rationality. Following this, I will propose a Tomasian response to this objection which suggests that freedom of economic contract and private productive property ownership *are* in fact necessary for some individuals to develop their capacity as rational self-authors and therefore ought to be deemed basic.

In response, I will point out that this line of argument fails because, for a liberty to be basic, it needs not only to be essential for the development of one or both moral powers but also, general across all citizens. Because Tomasi’s liberties do not meet the generality condition I will conclude that the economic liberties are not basic. To say this is not to deny that Tomasi’s economic liberties are important and even necessary for certain individuals to satisfy their third fundamental interest of pursuing a particular conception of the good life. But basic liberties are only concerned with satisfying the two fundamental interests of reasonableness and

rationality and **not** the third fundamental interest of pursuing a particular conception of the good.

From this, I will conclude that even though private productive property ownership and freedom of economic contract may allow some individuals to satisfy their third fundamental interest, this is not sufficient for us to grant freedom of economic contract and the right to private productive property ownership basic rights status.

2. Why the Economic Liberties Aren't Basic

The rights Rawls classifies as “basic” are those that meet the “essential social conditions for the adequate development and full exercise of the two powers of moral personality over a complete life.”⁷¹ As a reminder to the reader, these moral powers refer to reasonableness, or our capacity for a sense of justice, and rationality, which is our ability to form, revise and pursue a conception of the good.

In direct denial of Rawls’ claim that “the right to private property in natural resources and means of production...including rights of acquisition and bequest” are not essential for developing the two moral powers, Tomasi holds as a main tenet of his theory that these economic liberties are in fact essential for the development of the two moral powers and, for this reason, ought to be deemed basic.⁷² In this section I will set out to clarify why it is that Rawls purposefully excludes the economic liberties from his list of basic liberties. I will then explain why Tomasi rejects this argument and lastly I will end by suggesting that Tomasi’s justification for making the economic liberties basic is flawed.

⁷¹ Rawls, John. *Political Liberalism*. New York: Columbia UP, 1993. p.293. Print.

⁷² Rawls, JAF, p.114.

2.1 Rawls' Criteria for Basic Liberties

Discriminating amongst his own list of basic liberties, Rawls argues that the equal political liberties and freedom of thought are essential for citizens to develop their moral power of *reasonableness*, since they both “enable citizens to develop and to exercise [their moral powers] in judging the justice of the basic structure of society and its social policies.”⁷³ They perform this role by ensuring that citizens do not have to rely on others to protect their rights and political interests, but instead have, as a constitutional guarantee, the freedom to think and debate for themselves about issues concerning justice. For example, by having my right to vote guaranteed as part of the basic political liberties, I will always be able to voice my opinions on which laws I think are just and unjust and which politicians I think will best promote my interests. Similarly, liberty of conscience and freedom of association are critical for citizens to develop their *rational* capacity, since they “enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing...their conceptions of the good.”⁷⁴ For example, by establishing liberty of conscience and freedom of association as constitutional essentials I will always be free to pursue any number of conceptions of the good, which allow me to live a full and meaningful life; whether that be, by meditating, perhaps with others, on the works of some particular religion or by subscribing to many different philosophical doctrines throughout the course of my lifetime.

One important nuance of Rawls' theory is that not all of the basic liberties need to be *directly* involved with the development of the two moral powers. For

⁷³ Rawls, JAF, p.45.

⁷⁴ Rawls, JAF, p.45.

example, neither, freedom and integrity of the person, nor the rule of the law directly affect our capacity as reasonable or rational citizens. However, both of these liberties are still considered basic because they are “supporting liberties,” needed to appropriately enforce the other basic liberties.⁷⁵

2.2 Tomasi Justifies the Economic Liberties

In Free Market Fairness, Tomasi argues that the economic liberties are basic precisely for the same reason that Rawls’ liberties are: because they enhance the moral powers of citizens. For Tomasi, the economic liberties are basic because “with prosperity, the exercise of thick private economic liberty is for many citizens an essential condition of responsible self-authorship.”⁷⁶ So, by ensuring that individuals have their economic liberties guaranteed, citizens will be better able to exercise their agency and in so doing, their ability to develop a sense of justice and pursue a conception of the good.

In the subsequent section I will argue that Tomasi misses out on a key distinction between Rawls’ basic liberties and his own two liberties of the right to private ownership of the means of production and freedom of economic contract. Namely, basic liberties must be suitably general so as to apply to *all* reasonable and rational citizens and not merely to some unique subset of citizens.

2.3 The Generality Condition

For a liberty to be basic it must be the case that it significantly contributes to the protection of the two moral powers for *all* citizens and not just some. The reason

⁷⁵ Rawls, JAF, p.113.

⁷⁶ Tomasi, FMF, p.183.

Rawls requires this generality condition in deciding which liberties are basic is twofold.

First, requiring that all basic rights be general resolves the problem of indeterminate values; such that, what individuals value before they go behind the veil of ignorance has the potential to be entirely different from, or even come into conflict with, what they value once the basic structure of society has been remodeled. However, if a right is general it will be valued no matter what the basic structure of society turns out to be.⁷⁷ Applying this to Rawls' basic liberties, it will never be the case that someone thinks they care about liberty of conscience behind the veil of ignorance but then it turns out they do not when they come out from behind the veil, because liberty of conscience, or having the freedom to follow some ethical or religious belief, is constitutive of living a reasonable life. Conversely, some alternative value such as having the right to hunt freely wherever you like would not be deemed basic because if it turned out that you highly valued animal rights when you came out from behind the veil of ignorance you would no longer wish for this right to be a constitutional essential.

Second, requiring that all basic rights be general prevents assessments of significance about which liberties ought to be included in the set of basic liberties from becoming citizen specific.⁷⁸ For example, if someone were to try to write in the constitution a law decreeing that, "Forthwith, no one shall work on Sundays, as Sunday is the Lord's day, and must be maintained as a day of rest" this would be highly controversial since although it is recognized as a tenet of the Christian faith, it

⁷⁷ Pogge, JR, p.88.

⁷⁸ Pogge, JR, p.88.

stands in stark contrast to the Quran, of Islamic faith, which reads, "When the call is proclaimed to prayer on Friday, hasten earnestly to the Remembrance of Allah, and leave off business."⁷⁹ If the third fundamental interest were included in our assessments of significance, then determining to what extent the right to ban work on Sundays ought to be basic becomes unclear, since it may be of great significance for Christians but not for Muslims and other non-Christians. This in turn leads to the worry that if the list of basic liberties is to fully protect not only the exercise and development of reasonableness and rationality but the development of the third fundamental interest as well, then the list of basic rights would have to include rights reflective of an infinite number of unique conceptions of the good.⁸⁰ Since it would be impossible to account for all citizens' individual conceptions of the good in generating the full list of basic liberties, it follows that in this case too, a law is only basic if it is sufficiently general so that all reasonable citizens deem it as essential.

3. Why the Economic Liberties Are Not General

Applying this generality condition to Tomasi's economic liberties we can now see why freedom of economic contract and ownership of private productive property do not meet this condition for being basic. In regards to the problem of indeterminate values, Tomasi may be right to presume that some individuals would prefer having a right to private productive property ownership before going behind the veil of ignorance, however, if these citizens then discovered that what they value when the veil of ignorance gets lifted is living and working communally with their

⁷⁹ Khalifa, Rashad. *Quran: The Final Testament*. Fremont, CA: Universal Unity, Surah 62.9 Al-Jamu'a. 2000. Print.

⁸⁰ Pogge, JR, p. 89.

neighbors, then the significance they grant to private holdings of productive property, and by extension income and wealth, would diminish.

Similarly, just as the law prohibiting work on Sundays did not constitute a basic right because it was significant only in virtue of satisfying the third fundamental interest of Christians, so too should Tomasi's liberties not be considered basic because they also are only significant of some citizens' third fundamental interest. For example, the right to private ownership of the means of production may be valuable for Amy of Amy's Pup-In-a-Tub but someone happily working in a trade union would have no reason to deem private productive property ownership an essential condition for living a valuable life. As Samuel Freeman puts it "a claim that all persons must exercise thick economic liberties for their self-authorship is false, since most people who effectively author their own lives do quite well without being entrepreneurs or owning and extensively controlling productive property."⁸¹

Likewise, the right to negotiate the terms of employment is not a shared value between all citizens since those who work in trade unions standardly negotiate better contracts when negotiating with their union rather than on their own.⁸² So, even if Tomasi is right to assume that more robust economic freedoms are necessary for *some* people to satisfy their third fundamental interest, it does not follow that these rights ought to automatically be deemed basic since they are not necessary for the full-development of all citizens' moral powers.

⁸¹ Freeman, Samuel. "Can Economic Liberties Be Basic Liberties?" *Bleeding Heart Libertarians*. N.p., 13 June 2012. Web. 20 Nov. 2015.

⁸² Mishel, Lawrence, and Matthew Walters. 2003. *How Unions Help All Workers*. Economic Policy Institute, Briefing Paper No. 143. URL= <http://www.epi.org/publication/briefingpapers_bp143/>.

4. Tomasi Fires Back

Tomasi pushes back against this objection by arguing that while the economic liberties may at first glance appear not to be necessary for the development of the two moral powers of all citizens, upon closer inspection, it turns out they are.⁸³ To help illustrate this point Tomasi uses the following example of Terry and Tom to show that the basic political liberties can also, on occasion, operate in this non-obvious way, but this does not mean that we should think them any less basic.

For Terry, involvement in political organization and campaigning is essential for his self-authorship, whereas Tom hates all things political and steers as far away from the campaign trail as he possibly can. Although both Terry and Tom differ in how they experience political liberty, it does not follow that political liberty is necessary only for Terry and not for Tom. Rather, what matters, Tomasi says, is that both Terry and Tom have the option to pursue their different life plans in a meaningful way, so long as pursuing these life plans does not conflict with the life plans (and basic rights) of others. In this sense, the political liberties are general simply because they allow Terry the positive freedom of opting-in to political activism and Tom the freedom of opting-out of it. Tomasi takes this to mean that the political liberties are general simply because they expand the options available to all citizens, “which scheme is compatible with the same scheme of liberties for all.”⁸⁴

⁸³ Tomasi, John. "Reply to Samuel Freeman: Thick Economic Liberty." *Bleeding Heart Libertarians*. N.p., 18 June 2012. Web. 21 Jan. 2015.

⁸⁴ Rawls, JAF, p.42.

Applying this reasoning to his own economic liberties, Tomasi claims that his rights can likewise be viewed as essential for the moral development of all citizens, on closer inspection. For, without the freedom to choose between a wide variety of ownership schemes, including private ownership of the means of production, as well as public ownership, “citizens are vulnerable to having others use state power to impose some ownership configuration upon them.”⁸⁵ Similarly, excluding freedom of economic contract from the list of basic liberties also limits the ways in which a citizen can negotiate the terms of their contracts. By omitting the economic liberties from the list of basic liberties, the opportunities of citizens who value these liberties are limited since people like Amy of Amy’s Pup-In-A-Tub can no longer opt-in to being the sole source of their economic security. Because this is so, Tomasi concludes, “a scheme of basic liberties that makes a wide range of ownership configurations formally available to citizens...better expresses our commitment to respect citizens as responsible authors of their own lives;” and so, the economic liberties ought to be deemed basic.⁸⁶

5. Responding to Tomasi

While Tomasi is right to say that exclusion of the economic liberties from the top tier of basic liberties limits the ownership configurations and contract options available to citizens, I disagree with his contention that all citizens *need* the widest array of ownership and contract schemes possible in order to fully develop their moral powers. This is because limiting the ownership and contract schemes available to citizens does not harm their ability to live reasonable and rational lives

⁸⁵ Tomasi, Reply to Samuel Freeman.

⁸⁶ Tomasi, Reply to Samuel Freeman.

whereas limiting Rawls' basic liberties does. If the right to private productive property ownership were not protected as a basic liberty, all citizens, including those who valued these economic liberties, would still be able to earn their livings doing meaningful work, they would still be able to develop a sense of justice by voting and entering into public dialogue with their fellow citizens and they would still be able to formulate a conception of the good by subscribing to some religion or ethical value system. Contrast this outcome with the restriction of Rawls' basic liberties. If the political liberties were not included in the list of basic liberties then this would impose an impermissible restriction on all citizens' moral powers, *including* Tom's, since without the protection of freedom of thought, citizens could find themselves living in an Orwellian-like state, rampant with censorship and privacy violations, which would make exercising the moral powers impossible.

As was noted earlier, Rawls' generality condition is not meant to suggest that *everything* that is important to individuals ought to be included in the list of basic liberties. For this would mean that hundreds of additional rights would need to be added to the list of basic liberties in the hopes of even further expanding the array of options available to citizens.⁸⁷ Instead, a proper interpretation of the generality condition means that a right is basic if it is needed to protect and ensure the development of the moral powers for all citizens. Whereas someone who values economic decision-making can still live a full and meaningful life without having their economic liberties guaranteed, this is not the case with Rawls' other basic

⁸⁷ Refer back to p.41 section 2.3 The Generality Condition

liberties. Without the protection of Rawls' basic liberties the harm imposed on all members of society would be great.

Despite Tomasi's claim to the contrary, it seems that his economic liberties are only reflective of a third fundamental interest, for which only a small subset of the population has a stake claimed. Moreover, the Terry and Tom example Tomasi uses to show that the economic liberties are as basic as the political liberties fails because whereas the political liberties are necessary to ensure that all citizens are able to develop and exercise their moral powers, the economic liberties are only important in the third-fundamental interest sense.

6. Continuing the Debate: Is Generality Really Necessary?

Although Tomasi's economic liberties may not satisfy Rawls' generality criterion, we may wonder whether or not Rawls is right to make generality a necessary condition of basic rights. One reason to worry about this is that certain rights and liberties may be of extreme importance to the *majority* of society even if they are not significant or important to *all* members of society. Take for example the case of reproductive rights. Extending freedom and integrity of the person to include affording rape victims the right to an abortion may be extremely important for women to fully exercise and develop their two moral powers. However, this particular right is of little to no significance for men because men cannot themselves have an abortion and only some men have wives, daughters or close female friends who's need to get an abortion would significantly affect their lives.⁸⁸ Because on Rawls' account we do not know essential features about ourselves behind the veil of

⁸⁸Pogge, JR, p.89.

ignorance, including our gender, we would not grant reproductive rights basic status, even though women, who account for more than half of society may prefer to have this freedom granted to them once the veil has been lifted.

Another criticism of Rawls' generality condition is that even if a right is only significant for some minority group, the minority group may be more interested in having this right guaranteed over some of the other basic rights. For example, those with severe medical disabilities would likely be more concerned with having reliable access to medical treatment than having the right to hold public office guaranteed to them. However, as Martha Nussbaum explains in her book, Frontiers of Justice: Disability, Nationality, Species Membership, this right would not be guaranteed as a constitutional essential on Rawls' account because those behind the veil of ignorance are self-interested, and rational parties who deliberate about what justice requires without serious philanthropic or altruistic motivations. Because those in the original position are concerned only with their individual advantage and the mutual advantage that they can gain through fair cooperation with others, they would see no obvious benefit in cooperating with the severely disabled, and therefore they would not seek principles of justice that explicitly meet the needs of the severely disabled.⁸⁹

6.1 Why Generality Is Really Necessary

Despite these very real apprehensions, Rawls may still be perfectly justified in requiring that the basic liberties be general. This is because in establishing his theory, Rawls was not concerned with creating a society that satisfies the myriad of

⁸⁹ Nussbaum, Martha Craven. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Belknap, p.181. 2006. Print.

individuals' specific, and often conflicting, interests; but rather, "to establish the principles of background justice for the basic structure of society." In limiting the scope of his claim to establishing the basic structure of society and not all societal institutions and principles, Rawls is not claiming that these gender based concerns and concerns about disabilities are less morally important than are the basic principles of justice. Instead, he is merely arguing that these concerns would be better resolved at the remedial level, with interest-specific institutions, once the basic structure and institutions governing society have already been established.⁹⁰

Thus, since generality really is a necessary condition of basic liberties and since Tomasi's economic liberties are not essential for the moral development of the general populace, the economic liberties are not in fact basic in the crucial Rawlsian sense.

⁹⁰ Freeman, Samuel. "Frontiers of Justice: The Capabilities Approach vs. Contractarianism. *Texas Law Review* 85:385-431. p.17. 2006.

Chapter 4.
Tomasi's Difference Principle: Too Different?
Defending the Second Principle of Justice

"The outstanding faults of the economic system in which we live are its failure to provide for full employment and its arbitrary and inequitable distribution of wealth and income."

- John Maynard Keynes, *The General Theory of Employment, Interest and Money*

1. Introduction

I will now move on to consider how Tomasi's proposed changes to Rawls' first principle of justice threaten the effectiveness of the second principle of justice. I will begin by showing that if one *were* to grant the economic liberties basic status, this would have the undesirable consequence of impinging on society's ability to maximize the position of the worst-off, due to the priority granted to the first principle of justice over the second. If Tomasi's interpretation is to stay true to Rawls' theoretical framework, then society must aim at satisfying the basic liberties (including the economic liberties) first, before moving on to satisfy any distributional concerns falling under the jurisdiction of fair equality of opportunity or the difference principle.

This is worrisome because once freedom of economic contract is established as a constitutional essential, then attempts by the state to outlaw certain contracts would seemingly be impermissible, even if said contracts were signed under conditions of unfair duress caused by employers holding disproportionate bargaining power over their would-be employees. Similarly, there is a worry that if private-productive-property ownership is made a constitutional guarantee, then this may further increase the scarcity of property available to non-property owners. However, in response to this second objection I will concede to Tomasi that in some

instances, it may be to the benefit of the worst-off to have only a small elite control the means of production. So, while Tomasi may escape the productive property ownership objection, he does not escape the freedom of contract concern.

Following this I will present a family of objections that reject Tomasi's interpretation of the relationship between the various difference principle ("DP") goods, and the emphasis he places on maximizing income and wealth with the market democratic difference principle. The first of these objections will challenge Tomasi's assertion that the DP good of powers and prerogatives of office (PPO) is rivalrous with the DP good of income and wealth. The second objection will suggest that even if these goods are in fact rivalrous, it may not be true that status, which requires increased levels of PPO, ought to be sacrificed in order to secure agency, as Tomasi suggests. The last of these objections argues that even if increased income and wealth were to provide individuals with greater agency this would not guarantee that market democratic institutions are necessarily more efficient than alternative regime types, such as property-owning democracies or liberal democratic socialism, at increasing the *worst-off's* holdings of income and wealth. All of these objections are to suggest that Rawls' original proposal is preferable to Tomasi's market democratic interpretation.

2. The Priority Problem

Even if it were possible to show that the economic liberties *are* in fact essential for the development of the two moral powers for all citizens—contrary to what I argued in the previous chapter—it does not follow that we ought to accept Tomasi's free market fairness theory wholesale. This is because, by guaranteeing the

two economic liberties their place in the sun, Tomasi has also guaranteed their priority over the second principle of justice. In this segment I will show how this consequence of Tomasi's theory can be hugely problematic, since the lexical priority of freedom of economic contract over the second principle of justice makes it difficult for the government to enforce legitimate labor regulations while the priority of private productive property ownership may make scarcer the property available to non-property owners.

2.1 Freedom of Economic Contract

Granting freedom of economic contract priority over the second principle of justice poses a direct threat to legitimate labor regulations. Historically, this problem has been evidenced in constitutional labor law cases from the *Lochner* era of the early 20th century. During this period in American history, the Supreme Court took a strongly libertarian stance on interpreting the constitution, and in so doing, struck down upwards of 200 pieces of legislation involving government regulation of markets, on the grounds that these statutes conflicted with the basic liberties.⁹¹ The landmark case of *Lochner v. New York*, which first incited the Court's anti-interventionist stance, ruled that a state statute limiting the number of hours a baker could work in a given week to 60, posed an "unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, and as such...is in conflict with, and void under, the Federal

⁹¹ Phillips, Michael J. How Many Times was *Lochner*-Era Substantive Due-Process Effective, 48 *Mercer Law Review* (1997).

Constitution.”⁹² The Court justified their decision by arguing that this New York statute violated the 14th amendment due process clause, which accords “no state can deprive any person of life, liberty, or property without due process of the law.” Since this statute purportedly deprived Joseph Lochner, an employer who permitted bakers to work more than the maximum 60 hours a week of his liberty of contract, it violated the 14th amendment.

What this ruling and others like it fail to recognize, is that labor regulations and a certain degree of government intervention are necessary to ensure fair labor conditions for all. In systems of unequal wealth and power those with more have an unfair advantage over those with less. When a single mother needs to work so that she can support herself and her children, there is little opportunity for her to negotiate the terms of her contract. In these types of situations, the mother could be coerced into desperation bargaining, whereby she must choose either to consent to a job that requires her to work in unfavorable working conditions or alternatively have no job at all and no way to support her family. Describing this phenomenon in her book Nickel and Dimed: On (Not) Getting By in America, Barbara Ehrenreich explains that “what you don't necessarily realize when you start selling your time by the hour is that what you're really selling is your life.”⁹³ The threat of desperation bargaining, of effectively selling your life away, would only increase if freedom to negotiate contracts were guaranteed as a basic liberty. In making freedom of

⁹² Lochner v. New York. The Oyez Project at IIT Chicago-Kent College of Law. 19 March 2015. <http://www.oyez.org/cases/1901-1939/1904/1904_292>.

⁹³ Ehrenreich, Barbara. Nickel and Dimed: On (not) Getting by in America. New York: Metropolitan, 2001. p.187. Print.

contract a constitutional essential, free market fairness effectively establishes precedence for contracts made under duress to be upheld, regardless of the inherent coerciveness of the initial contract negotiations.

Tomasi could respond to this objection by noting that market democracy does not prohibit *all* regulation of the economic liberties. For, just as Rawls allows that some basic liberties may be regulated in order to generate the greatest bundle of basic liberties for all, so too does Tomasi allow that the economic liberties may be regulated if it will increase the overall bundle of basic liberties. In terms of freedom of economic contract, Tomasi allows that, “the affirmation of a right to occupational choice is compatible with a regulatory framework that imposes workplace safety standards.” However, Tomasi adds the caveat that any “attempts by legislative coalitions to limit the freedom of citizens [including the freedom of economic contract] must pass a high degree of judicial scrutiny.” Therefore, for Tomasi, regulation of the economic liberties is permissible, though it puts a high burden of proof on the judiciary to show that the restriction is in fact necessary.

While this objection makes Tomasi’s case seem decidedly more reasonable, it does not fully resolve the problem of desperation bargaining. For although Tomasi concedes that contracts can be regulated in order to forestall impermissible reductions of the other basic liberties, he does not allow regulation of contracts for the purpose of promoting equal bargaining power between citizens. Because Tomasi values agency more highly than status, this issue of unequal status between employers and employees would be deemed an unfortunate albeit permissible consequence arising from having freedom of economic contract guaranteed as a

basic right. If this liberty were made basic it would impose impermissible restrictions on the bargaining power of the worst-off and their ability to negotiate contracts on an equal footing with employers. In so doing, it would worsen the position of the worst-off and thus impede the fairness condition of free market fairness.

2.2. Right to Private Productive Property Ownership

Just as prioritizing freedom of economic contract stymies a government's ability to nullify unjust contracts, so too does prioritizing private ownership of the means of production advance impermissible inequalities between the property owning and non-property owning classes. This is because, as Mathew Kramer describes it, while "property tends to promote autonomy by expanding the range of choices available to owners," it also "tends to constrict autonomy by limiting the range of choices open to non-owners."⁹⁴ In this section, I will describe how prioritizing the economic liberty of private productive property can make it impossible to meet the distributional needs of the poor by limiting the options available to them.

To begin, I will raise the issue of scarcity, or the problem that in a world of limited resources there will inevitably be some who are not able to own property. In light of this fact, if we are to expand property rights in the way that Tomasi suggests, this will only further increase the scarcity of property, by allowing private individuals to own property that could have been collectively held. This in turn would further lower the position of homeless, non-property owners by giving them

⁹⁴ Kramer, Matthew H. "Review: Property and Justice by J. W. Harris." JSTOR. Cambridge University Press, Nov. 1997. p.642. Web. 15 Mar. 2015.

even fewer opportunities to own property. Following this I will introduce an argument that could be used to defend Tomasi against this claim.

2.2.1 The Scarcity Problem

One of the reasons prioritizing the right to private productive property ownership is so problematic is because of the empirical problem of scarcity. In a world of limited resources, such as ours, inalienable property rights lead to domination by property owners over non-property owners. This is because, if the world's property is fully owned by others "one is not permitted to do anything without [the property owner's] consent—since that would involve the use of their property."⁹⁵ In his paper, *Homelessness and the Issue of Freedom*, Jeremy Waldron shows that this scarcity problem coupled with private property rights seriously conflicts with the negative freedom of the homeless - to be someplace where they are "not legally liable to be physically removed from that place or penalized for being there."⁹⁶ Since this negative freedom is obstructed by the constant threat of eviction and civil or criminal sanctions posed on the homeless, simply in virtue of their lacking access to a private place to do necessary human acts, such as urinating and sleeping, the homeless are effectively made unfree. Summarizing this point Waldron states, "if an action X is prohibited (to everyone) in public places *and* if a person A has no access to a private place wherein to perform

⁹⁵ This same line of objection is often used to critique the Libertarian value of self-ownership (See footnote 5 for more on self-ownership). Vallentyne, Peter and van der Vossen, Bas, "Libertarianism", The Stanford Encyclopedia of Philosophy (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2014/entries/libertarianism/>>.

⁹⁶ Waldron, Jeremy. "Homelessness and the Issue of Freedom." 39 UCLA L. Rev. 1991-1992. p.304. Web. 11 Mar. 2015.

it, then action X is effectively prohibited to A everywhere, and so A is comprehensively unfree to do X.”⁹⁷

On its own, this problem ought to be worrying for any society, regardless of whether or not they guarantee rights to private-ownership of the means of production (as Tomasi proposes) or just guarantee rights to ownership of personal property without strictly guaranteeing rights to private ownership of the means of production (as Rawls does). However, the reason this problem is *more* troubling for Tomasi’s case than Rawls’, is that in seeking to expand the range of property available for private ownership, Tomasi is effectively making the amount of property that is available to the poorest, non-property owners even scarcer. Whereas on Rawls’ view “institutions must, from the outset, put in the hands of citizens generally, and not only of a few, sufficient productive means for them to be fully cooperating members of society on a footing of equality” Tomasi’s view could permit the means of production to be held by an elite class, thus overriding Rawls’ distributional requirement that property be made more available to non-property owners.⁹⁸

2.2.2 Defending Tomasi Against the Scarcity Problem

Although one could deduce from the previous section that society necessarily benefits from having inequality in property holdings reduced, it is not true that this entailment relationship always holds. There are certain cases when it may in fact be detrimental to society to transfer property from one class of people to another, simply to make the distribution in property holdings more egalitarian. The following

⁹⁷ Waldron, p.315.

⁹⁸ Rawls, TJ, p.140.

example by David Schmdtz provides such a case, where keeping property in the hands of the few may in fact improve overall social welfare and by extension the welfare of the poor:

“Given one unit of corn, Jane Poor will put it to its highest valued use, namely immediate consumption. Joe Rich, having already consumed a unit and thus being satiated for the moment, will invest the corn in something that is, by Rich’s own lights, less urgent. Poor eats the corn, whereas Rich, already having eaten enough, has nothing better to do with his surplus than to plant it.”⁹⁹

In this example, granting Joe Rich the right to retain his surplus holdings of corn makes it the case that he can then plant the excess corn, and in so doing, make more corn available to society as a whole. This shows that despite the fact that Joe Rich experiences diminishing marginal utility of consumption, whereby each additional piece of corn he consumes is less satisfying than the first, this does not necessarily mean that he should just eat one piece of corn and donate the second to Jane Poor. Rather, if Joe plants the corn, and in so doing makes 10 more pieces of corn, this would improve overall social welfare by generating enough food to feed himself, Jane and eight other people as well. This shows that “In a world of production, diminishing marginal utility of consumption implies less and less reason to consume and, relatively speaking, more and more reason to invest in long-range production.”¹⁰⁰

⁹⁹ Schmdtz, David. “Diminishing Marginal Utility and Egalitarian Redistribution”, *The Journal of Value Inquiry* 34:2/3 (2000). p. 267. Web.

¹⁰⁰Schmdtz, p.271.

Relating this back to Tomasi's theory, it now appears that what may be maximally beneficial for the poor is to allow productive property to be held in the hands of only a few, wealthy citizens. For, as this case suggests, granting some individuals private property rights of the means of production can crucially contribute to improving the position of the worst-off. Since it is at least *possible* that the poor will have more access to essential goods if the right to private productive property is protected, this suggests that prioritizing ownership of private productive property over concerns of the equal distribution of property can be defended on Tomasi's account.

In summation, while Tomasi may be able to avoid the current objection against prioritizing private productive property rights over the distributional concerns of the non-property owning class, he still must answer for granting freedom of economic contract priority status. Since prioritizing freedom of economic contract allows for unequal bargaining power between citizens, it threatens to solidify the relational status of the laboring class as distinctly lesser than the employing class, which seems an impermissible outcome for any theory of justice.

With this priority problem settled, I will now move on to address some crucial assumptions underlying Tomasi's amendments to the difference principle.

3. Rivalrous DP Goods (PPO v. Income and Wealth)

Trade-offs are a common occurrence in day-to-day life. In deciding whether or not to go out to a movie tonight with friends or stay in to study for your exam you are forced to weigh the opportunity costs associated with each option in order to

decide which of the two options is best for you to do. In his interpretation of the bundle of DP goods, Tomasi sees a similar kind of trade-off as existing between the DP goods of income and wealth and powers and prerogatives of office. As he puts it, “some of the DP goods are rivalrous, such that a choice to increase shares on one dimension of the bundle requires that we accept diminished shares on another.”¹⁰¹

In Tomasi’s mind, this trade-off requires us to pick between two competing interpretations of the difference principle. On the one hand, we could select the capitalist (market democratic) interpretation, which seeks to “satisfy the difference principle by virtue of producing greater wealth over time.” This he refers to as the “greater wealth thesis.” On the other hand, we could select the more egalitarian (social democratic) interpretation, which may limit the share of income and wealth distributed to the worst-off in order to ensure that citizens have greater “democratic powers to make economic decisions, including democratic powers of control over productive resources.”¹⁰² This interpretation Tomasi refers to as the “democratic workplace power thesis.”¹⁰³ Tomasi favors the capitalist interpretation, whereas, he argues, high liberals favor the egalitarian interpretation.

For Tomasi, the trade off between more democratic workplace power and greater income and wealth is easily decided when you consider the fact that if you were to offer anyone the option of having their wages lowered in favor of having their workplace participation increased, you would be hard-pressed to find anyone who would agree to such a trade. This is because “a reduction in wages amounts to a

¹⁰¹ Tomasi, FMF, p.186.

¹⁰² Tomasi, FMF, p.188.

¹⁰³ Tomasi, FMF, p.189.

reduction in [your] effective power to use [your] rights in pursuit of projects that are central to [your life].”¹⁰⁴ Or so says Tomasi.

But I am unconvinced by this conclusion for two reasons. First of all, it assumes that democratic workplaces and greater wealth are in fact rivalrous, which, as I will show, is not necessarily the case. And second, it assumes that having more money, rather than more workplace democracy, enables individuals to feel that they have greater self-authorship over their lives. In what follows I will address each of these assumptions in turn.

3.1. Against Assumption 1

In arguing that greater wealth is rivalrous with greater workplace democracy, Tomasi starts from the assumption that economic growth, and by extension greater wealth, is more attainable in a free market society than in a more egalitarian or democratic society. The table on the next page, first imagined by Jason Brennan, helps to illustrate this point by comparing the material holdings that arise in a capitalist society (ParetoSuperiorLand) with the material holdings that arise in a more egalitarian society (FairnessLand). For our purposes we can imagine ParetoSuperiorLand as representing one of Tomasi’s preferred market democratic regimes, and FairnessLand as representing one of the more egalitarian regime types favored by Rawls. Interpreting this graph from the Tomasi/Brennan standpoint, it reveals that as time goes by, the absolute position of the worst-off is exponentially improved in ParetoSuperiorLand as a result of the material benefits associated with efficient, economic growth brought about by free market competition. As a result of

¹⁰⁴ Tomasi, FMF, p.191.

this economic efficiency, society benefits with eight times as much growth in ParetoSuperiorLand as in FairnessLand.

	<i>ParetoSuperiorLand</i>			<i>FairnessLand</i>		
	<i>Poor</i>	<i>Middle</i>	<i>Rich</i>	<i>Poor</i>	<i>Middle</i>	<i>Rich</i>
2000	10	20	40	15	19	24
2001	10.4	20.8	41.6	15.3	19.4	24.5
2002	10.8	21.6	43.2	15.6	19.8	25.0
2025	26.7	53.3	106.6	24.6	31.2	39.4
2050	71.1	142.1	284.3	40.4	51.2	64.6
2100	505.1	1010.1	2020.2	108.7	137.7	173.9

From this, Tomasi concludes that market democratic regimes necessarily lead to higher growth rates and greater wealth for everyone, including the worst-off, than do more egalitarian/democratic regimes.¹⁰⁵

3.1.1 Equal Economic Incentive

In response to this, I argue that Tomasi's conclusion is far too hasty since both of Rawls' preferred regime types, property-owning democracy and liberal democratic socialism, meet all of the same necessary conditions for promoting economic growth and increasing wealth, as do Tomasi's preferred regime types. For example, both property-owning democracies and market democracies incentivize productivity by granting the right to private ownership of the means of production. The only notable difference between the two is that property-owning democracies require that wealth be broadly distributed across society so as to avoid the wealth being concentrated in the hands of a small elite.¹⁰⁶

¹⁰⁵ Tomasi, FMF, p.235.

¹⁰⁶ Pogge, JR, p.133.

In addition to this, property-owning democracies may actually lead to even greater economic growth than market democracies as a result of their additional commitment to seeking full employment. Although most economists agree that productivity is the number one determinant of economic growth it is important to note that it is not the only one. In his book, The Way it Worked and Why it Won't: Structural Change and the Slowdown of U.S. Economic Growth, Professor Gordon Bjork illustrated this point when he wrote, "Is growth in productivity always the most important determinant of growth in per capita GDP? No. In the decade ending in 1980, the gains from increased [workplace] participation contributed more than productivity to the growth in GDP per capita."¹⁰⁷ This example shows that productivity is not the only way for a society to promote growth and increase holdings of income and wealth. Instead, higher rates of employment can lead to greater income and wealth as well. If this is true then it seems that property-owning democracies, which aim at both full employment *and* efficient markets are superior to Tomasi's regimes because they target two primary determinants of economic growth, whereas market democracies, which permit unemployment, only aim at one - a productive and efficient free market. Since this is true, it seems that property-owning democracies are superior to market democracies in promoting economic growth and increasing shares of income and wealth. Therefore, Tomasi's

¹⁰⁷ Bjork's quote continues on to grant that "productivity is *usually* the most important determinant and, in the long run, growth in per capita income resulting from productivity growth is the primary reason for growth and is modified by the other factors." This concession is consistent with my argument since it is not imperative that increased employment is always the best determinant of growth. Rather it is sufficient to show that because employment can at least in one example play a larger role in determining growth than productivity, than it is better to have a system that allows for higher levels of employment and productivity. (Bjork, Gordon C. *The Way It Worked and Why It Won't: Structural Change and the Slowdown of U.S. Economic Growth*. Westport, CT: Praeger, 1999. p.69. Print).

assumption that greater wealth and greater democratic workplaces are necessarily rivalrous is wrong.

Rawls' second proposed regime type, liberal (democratic) socialism, can likewise be proven to be preferable to Tomasi's market democratic regimes. This is because its call for private (albeit collective) ownership of the means of production has the same potential for incentivizing productivity, as does the market democratic call for private (individual) ownership of the means of production.¹⁰⁸ To illustrate this idea further, imagine a market that allows for individual private ownership of the means of production. In this situation competing firms A and B, which are privately owned, are both subject to the laws of economic competition. If we assume that these rivalrous companies are competing in a perfectly competitive market, such that there are many buyers and sellers and prices are determined by the laws of supply and demand, then at the level of ideal theory, the resulting market will be Pareto efficient, so that no one can be made better off without making someone else worse off. This is the golden rule of economics, and why so many assume that free markets, which naturally bolster competition, are preferable to interventionist systems that might reduce the competitive edge.

However, liberal (democratic) socialism would not undermine the positive effects of perfect competition. For, although these regimes do require some intervention in the economy, so as to ensure that individuals have enough say in their workplaces and thus promote the DP good of powers and prerogatives of office, they do not remove the incentives engendered by free market competition.

¹⁰⁸ Pogge, JR, p.134.

Instead liberal socialist democracies shift incentive competition from the individual to the collective. In this way, instead of person A's privately held firm directly competing with person B's privately held firm, it could instead turn out that in a liberal socialist society person A and B work together in a collectively owned firm that directly competes with person C and D's collectively owned firm. As a result, the market will continue to function as it had before with the two firms competing to meet the market demand and in this way the market will remain Pareto efficient despite excluding the right to individual private property ownership.

Since both property-owning democracies and liberal socialist democracies can function as productively, if not more productively, than can market democracies, it follows that property-owning democracies and liberal socialist democracies can also generate the same economic growth, and by extension, income and wealth as can market democratic regimes.¹⁰⁹ Since, in addition to increasing citizens' holdings of wealth, these two Rawlsian regimes also seek to increase citizens' holdings of powers and prerogatives, it follows that Tomasi's claim - that the DP good of income and wealth is rivalrous with the DP good of powers and prerogatives of office - is wrong.

3.2 Against Assumption 2:

Against Tomasi's second objection, there are many historic examples undercutting the assumption that individuals would feel a greater sense of self-

¹⁰⁹ "Productivity gains have historically led to gains in real income, lower inflation and increased corporate profitability. A company that is increasing output with the same number of hours worked will likely be more profitable, which means that it can raise wages without passing that cost on to customers, which keeps inflation pressures down, while adding to GDP growth (Barnes, Ryan Economic indicators: Productivity Report, Investopedia)."

authorship by having access to more wealth than having more opportunities for workplace democracy. In response to the burgeoning capitalism that swept over Britain during the Industrial Revolution, individuals turned to collective organization in the form of labor unions to protect themselves from becoming just another “appendage of the machine.”¹¹⁰ And today many companies continue to promote greater workplace democracy as a way of valuing the contributions of each employee. As Andrew Maynard, Director of Strategic Supply Chain Management for the WD-40 Company commented, “What I enjoy most about working in a democratic workplace is the prevalence of dignity and respect for the individual and their unique contribution. In this environment, every employee has something significant to contribute and the role of management is to enable the team members in meeting both individual and collective goals.”¹¹¹

As a way of pushing back against this claim, Tomasi argues that when the option of having increased democratic workplace opportunities is compared with the option of having increased shares of income and wealth people would certainly choose the latter over the former. The way he describes it is that professors would surely prefer having higher salaries to having more frequent committee meetings.¹¹² However, this is hardly an indisputable claim. For it is probable that some professors would be loath to sacrifice their participation in committee meetings for a salary increase, due to their moral or philosophical commitment to contributing to the goings on of their workplace. Since the workplace is where these professors

¹¹⁰ Marx, Karl, Friedrich Engels, and Jones G. Stedman. *The Communist Manifesto*. London: Penguin Books, 2002. p.227. Print.

¹¹¹ "WorldBlu - Freedom at Work." WorldBlu. N.p., n.d. Web. 10 Apr. 2015.

¹¹² Tomasi, FMF, p.191.

spend most of their days and where they engage in dialogue with colleagues about their particular shared areas of interest, professors are enormously affected by decisions made in these meetings and, being aware of this, many are likely to be reluctant to sacrifice these opportunities for income and wealth.

Furthermore, even if Tomasi were correct in assuming that professors and the like would, on the whole, prefer greater levels of income and wealth to more participation in their workplaces, it is possible that this premise may only hold against the backdrop of our current, highly capitalist society. Because of the way our society is now structured it may be the case that individuals are skeptical about whether or not greater participation in the workplace would actually lead to any real, tangible changes in their day-to-day activities. However, if it were possible for workplace participation to be implemented so as to allow for real democratic payoff in the workplace, so one's complaints and suggestions would actually be listened to and acted upon, then it is possible that preferences in this more egalitarian society would lean in favor of promoting PPO over income and wealth. For this reason, Tomasi's assumption that individuals would prefer having greater wealth to greater democratic workplace participation does not consider the possibility that preferences would likely change if the structure of society changed as well.

4. Status v. Agency

Harkening back to an earlier distinction made between Tomasi and Rawls, it may be helpful to consider this greater wealth v. greater democratic workplace debate as an extension of the earlier status v. agency debate.¹¹³ For Tomasi, the

¹¹³ See p.32 section on Status v. Agency: How Best to Approach Fairness?

reason we ought to increase the poor's holdings of income and wealth is so that we may provide them with the greatest opportunity to exercise their agency. On his account, "self-respect comes primarily from seeing oneself as a central *cause* of the particular life one is living." In contrast to this view, Tomasi takes social democrats to be seeking to increase democratic participation in the workplace with the goal of improving the relational status between citizens. As he puts it, "social democracy emphasizes the importance of each citizen being recognized as an equal political participant in the shared life of the community" where "self-respect comes primarily from being recognized by others in a certain way."¹¹⁴

One objection to this agency v. status distinction is that it ignores the inherent restrictions imposed by capitalist societies on agency. Even at the level of ideal theory, capitalism threatens to impinge on the agential capabilities of citizens by failing to guarantee them employment. Additionally, there is a fear that capitalist societies may permit the formation of monopolies, which would decrease citizens' agency by reducing overall societal income. Although, I will concede that Tomasi's theory can make allowance for this concern. Yet, while Tomasi may escape this particular critique, there is still another worry that he must respond to; namely, the problem of class domination, which necessarily arises from allowing extreme inequalities in material holdings.

4.1 Unemployment

Regarding employment, Tomasi assumes that individuals in a competitive market will have "enhanced power as individuals to bargain for better conditions, or

¹¹⁴ Tomasi, FMF, p.194.

even to walk away”, presumably when employers enforce oppressive or discriminatory practices. However, this notion that the power would lie with the laboring class rather than with the employers seems misguided when one considers the fact that even in an idealized market democratic society, unemployment is a natural byproduct of market competition. As Carl Shapiro and Joseph Stiglitz describe it, “the equilibrium unemployment rate [in a labor market] must be sufficiently large that it pays workers to work rather than to take the risk of being caught shirking.”¹¹⁵ Since this is the case, certain individuals will inevitably be without work and by extension without a steady income, which by Tomasi’s own account necessarily restricts their ability to exercise their agency. Alternatively, Rawls’s property-owning democracies actively create arrangements, “to pursue macroeconomic objectives, such as the pursuit of full employment.”¹¹⁶

Since the unemployed population account for a sub-set of some of the worst-off members of society, I am skeptical of Tomasi’s claim that market democracies do a better job at increasing the worst-off’s agency than do Rawls’ social democratic alternatives. Under market democratic regimes there is no guarantee that the worst-off will have any employment whatsoever, and as a result their agency will be restricted. Conversely, property-owning democratic regimes directly aim at full-employment, and thus guarantee that the worst-off in society will have at least some income to enable them to exercise their agency.

4.2 Monopolization

¹¹⁵ Shapiro, Carl and Stiglitz, Joseph E. 'Equilibrium Unemployment as a Worker Discipline Device', *American Economic Review*, 1984, 74, p.433-44. 64.

¹¹⁶ Tomasi, FMF, p.229.

Further reason to worry about Tomasi's claim that market democratic regimes better enable individuals to increase their agency is that government regulation of monopolies would likely be made more difficult on Tomasi's account. In more unregulated economies, such as the kind Tomasi supports, monopolies arise when individual companies control scarce resource or patented goods. Due to their hold over the market, monopolists are in a unique position to set prices above the perfectly competitive price and reap profits at the cost of overall social welfare. Put succinctly, "When the monopolist raises prices above the competitive level in order to reap his monopoly profits, customers buy less of the product, less is produced, and society as a whole is worse off. In short, monopoly reduces society's income."¹¹⁷ Within the terms of Tomasi's account, a reduction in income equates to a reduction in agency.

In combatting this particular objection, two claims can be made in Tomasi's defense. First, Tomasi can argue in line with classical liberals that the government is permitted to intervene in instances where collusion or monopolies over scarce goods are concerned so as to maintain a competitive market place.¹¹⁸ Second, he can argue that to assume the presence of monopolies is to assume a non-idealized version of free-market capitalism, one bereft of fully competitive and free markets. Since, in deriving our basic structure of society, we are asked to adopt an idealized, or special conception of justice for which we assume "social conditions favorable to

¹¹⁷ Stigler, George J. "Monopoly." The Concise Encyclopedia of Economics. Library of Economics and Liberty, n.d. Web. 1 Mar. 2015.

¹¹⁸ Tomasi, John. "The Moral Case for Economic Liberty." 2014 Index of Economic Freedom: Promoting Economic Opportunity and Prosperity. The Heritage Foundation. N.p., n.d. Web. 1 Mar. 2015. <http://www.heritage.org/index/pdf/2014/book/chapter3.pdf>classical

the attainment of social justice,” the worry about monopolies does not pose a serious threat to Tomasi’s view, for in an ideal society markets would be perfectly competitive.¹¹⁹

4.3 Class Domination

The further consideration about class domination is one that was thought-provokingly raised by Anna Stilz in her article, *Is the Free Market Fair?* In this article, Stilz argues plausibly that, “extreme material inequalities can undermine agency, by allowing some private individuals to dominate others in ways that deprive them of self-direction.”¹²⁰ This is because market democratic institutions have no way of quelling “intergenerational transmission of advantage.”¹²¹ One way in which this type of class domination may occur in a market democratic society is that exceedingly wealthy parents may donate large sums of money to elite universities, and through this generous contribution, tacitly ensure the future admission of their children, grandchildren and great grandchildren. Conversely, children whose parents do not have the means to donate such a large amount of money to universities will not have this advantage and will be subject to a slightly lower status. In situations like this, the rich may regularly be more advantaged than the poor, thus creating a situation of class domination where “a certain stratum of social positions is effectively closed to [the poor].”¹²²

¹¹⁹ Tomasi, FMF, p.181.

¹²⁰ Stilz, Anna. “Is The Free Market Fair?” Critical Review 26.3-4 (2014): p. 435. Print.

¹²¹ Stilz, p.436.

¹²² Tomasi, Democratic Capitalism: A Reply to Critics. Critical Review Vol. 26, Iss. 3-4, 2014. p.227 Web.

While this example may be helpful in showing how intergenerational transmission of advantage may occur, class domination is hardly limited to cases of tacit agreements between university admissions offices and the wealthy elite. Rather, class domination extends to all aspects of civil life, including the political arena, the workplace and interpersonal relationships. Because of its extensive scope, class domination threatens to impermissibly reduce individuals' sense of self-authorship over their own lives. As Rawls put it, "significant political and economic inequalities are often associated with inequalities of social status that encourage those of lower status to be viewed both by themselves and by others as inferior" which in turn "may arouse widespread attitudes of deference and servility on one side and a will to dominate and arrogance on the other."¹²³

Should class domination be permitted, as it is in market democratic societies, then the poor's agency would be systematically restricted, due to their being fewer educational, political and workplace opportunities practically open to them. As a result of this decrease in agency, the poor may begin to lose their strong sense of self-respect, which is crucial for exercising their full self-authorship. In this instance, agency, self-respect and self-authorship can all be critically undermined by not restricting the amount of wealth and advantage that can be transmitted between generations. Allowing the wealthy elite to dominate over the poor in ways that can deprive the poor of critical opportunities for promoting their agency and self-authorship is a serious flaw of Tomasi's market democratic approach.

5. The Economic Growth Argument

¹²³ Rawls, JAF, p.131.

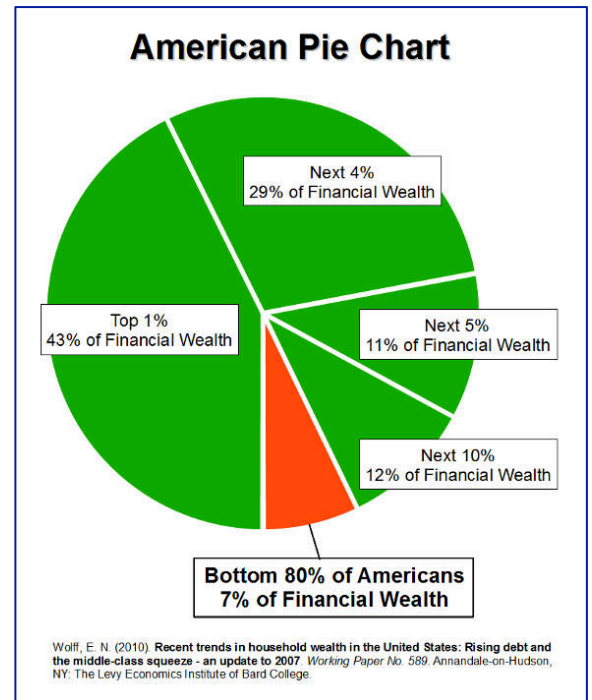
Even if it could be shown that having greater income and wealth leads individuals to have greater agency over their lives, *and* that agency is more essential for self-authorship than is status, Tomasi's market democracy may still fall short of Rawls' liberal alternatives because of his faulty assumptions about economic growth. The first assumption, which I have already brought into question, is that free market societies are more efficient than some more egalitarian societies at stimulating economic growth. A second assumption is that a higher growth rate for the overall economy will necessarily translate to a higher growth rate for the worst-off in society. I will finish by challenging the second of these assumptions.

5.1 Bigger Pie, Smaller Slices

A crucial flaw of Tomasi's economic growth argument is that a bigger economic pie for society does not necessarily guarantee bigger slices for all.¹²⁴ For although it is the case that in Brennan's table (see page 63), the size of the slices for each economic class grows commensurate with the size of the economic pie as a whole, this distributional pattern need not occur. Indeed, in the market democratic structure that Tomasi supports, it is just as likely that the gains earned from market competition, and the division of labor would be held solely by the top richest percentile while the poorest percentile would maintain only their pre-economic growth level of income.

¹²⁴ Arnold, RWR, p.397.

The image at right, representing present-day holdings of income and wealth in America, comes worryingly close to illustrating exactly this type of inequitable distribution. Forgetting for the moment concerns about the relational status between the rich and the poor, if it is possible that not even the absolute position of the worst-off will improve in a market democratic society, then there is reason to worry that market democracies will not be able to satisfy even Tomasi's watered-down version of the difference principle, which only seeks to increase the poorest's holdings of income and wealth without directly seeking to increase PPO and the social bases of self-respect. For this reason, Tomasi's claim that market democracies will necessarily lead to the poorest having greater holdings of income and wealth is dubious.



6. Summary of Objections

In this chapter I have argued that Tomasi wrongly interprets the importance of, and the relationship between, the three DP goods. He does this first by presuming that PPO and income and wealth are rivalrous, which is not true since property-owning democracies and liberal democratic socialism show that the DP good of PPO can be married to the DP good of income and wealth. Second, he assumes that income and wealth is more important than PPO because agency is more important than status. I rebutted this by showing, first, that not everyone would agree that

agency is as, or more important than, status and, second, that even if agency *were* more important, Rawls's regimes have the same potential for promoting agency as do Tomasi's proposed market democratic regimes. Lastly, I showed that Tomasi is mistaken in concluding that market democratic regimes realize higher levels of income and wealth for the worst off, since market democracy does not guarantee a higher absolute income for the worst-off.

Conclusion

In this thesis I have argued that Tomasi's market democratic interpretation of Rawls' theory of justice as fairness does not, as Tomasi suggests, fully resolve the dispute between high liberals and libertarians/classical liberals.

Although Tomasi successfully demonstrates that economic decision-making can be of extreme importance to some citizens, I argue that he does not prove that freedom of economic contract, and the right to own private productive property are basic in the Rawlsian sense. Rawls' basic liberties require a high standard of significance, i.e. they need to be *essential* for the full development of the moral powers of *all* citizens. I contend that Tomasi's economic liberties do not meet this standard, since individuals can live full and meaningful lives without having these economic liberties guaranteed to them. Therefore, freedom of economic contract and the right to private productive property ownership are not basic liberties. This is not to say that the economic liberties should not be granted any significance, since it is entirely possible that having more extensive property rights and rights to contract may be important for some individuals to satisfy their third fundamental interest of following a particular conception of the good life. However, since considerations about individuals' third fundamental interests are not to be considered when picking out which rights are basic, this line of reasoning cannot be used to defend Tomasi's claim that the economic liberties are basic.

In addition to this objection, I have also raised the worry that if the economic liberties were made basic, then this could limit the effectiveness of the second principle of justice because of the priority relationship of the first principle over the

second. Although I admitted that the right to own private productive property could, at least in theory, improve overall social welfare, I also noted that making freedom of economic contract a basic right poses a serious threat to legitimate labor regulations. This is because, if freedom of economic contract is granted basic status, then contracts negotiated using desperation bargaining could not be overturned to promote equality in bargaining power between the employing and laboring class.

Following this objection, I argued that Tomasi's justification for amending Rawls' difference principle, to aim primarily at increasing citizens' holdings of income and wealth, relied on unfounded assumptions. Against Tomasi's first assumption - that powers and prerogatives of office (PPO) are necessarily rivalrous with income and wealth - I argued that this is simply not the case, since both of Rawls' proposed schemes (property owning democracy and liberal democratic socialism) can theoretically maximize these goods simultaneously, without needing to trade off one good for the other. Additionally, I argued that Tomasi's second assumption - that citizens would place greater significance on securing income and wealth, than securing a more democratic workplace - was likewise misguided. This is because the work that people do plays a crucial role in their every day lives, and therefore many citizens either care, or should care, deeply about how much say they have in their workplaces.

Following this, I showed that Tomasi's claim that capitalist societies necessarily enhance citizens' agency was also highly controversial, since even at the level of ideal theory, capitalism allows for unemployment and no clear prohibitions against class domination. Rawlsian regimes, in contrast, seek full employment and

rectification for unfair advantages based on class and ability. The one concession I did grant Tomasi is that although the threat of monopolization is increased in a capitalist society, we cannot assume that monopolies will necessarily arise, since we must grant that at the level of ideal theory, markets will be freely competitive.

Lastly, I presented the worry that even if Tomasi were right to claim that market democratic regimes better stimulate economic growth than do social democratic regimes, this does not necessarily mean that market democratic regimes will necessarily increase the holdings of income and wealth held by the worst-off. Since it is possible that most of the money in a market-democratic society will be held in the hands of a highly concentrated wealthy elite, Tomasi's claim that his view better enhances the worst-offs holdings of income and wealth is unconvincing.

For all of the aforementioned reasons, Tomasi's claim that his market democratic approach to social justice offers "a more robust and morally ambitious account of the institutions we need if we sincerely wish to respect our fellow citizens as free and equal self-governing agents" is flawed. Commitment to Tomasi's framework threatens citizens' ability to live as free and equal democratic citizens by perpetuating a system of class domination and harmful inequality. However, in arguing for his position, Tomasi has compelled high-liberals to clarify and strengthen their own position on the nature of justice. To this extent, Free Market Fairness represents a highly valuable contribution to liberal political theory.

Works Cited

- Arnold, Samuel. "Putting Liberty in Its Place: High Liberalism Without the Liberalism." Putting Liberty in Its Place: High Liberalism Without the Liberalism. Academia.edu, n.d. Web. 20 Oct. 2015.
- Arnold, Samuel. "Right-wing Rawlsianism: A Critique." Journal of Political Philosophy, 21: 382–404. doi: 10.1111/jopp.12001. (2013).
- Barnes, Ryan. "Economic Indicators: Productivity Report | Investopedia." Investopedia. N.p., 03 Dec. 2003. Web. 15 Mar. 2015.
- Bentham, Jeremy. An Introduction to the Principles of Morals and Legislation (Dover Philosophical Classics). Dover Publications Inc. January 2009.
- Bjork, Gordon C. The Way It Worked and Why It Won't: Structural Change and the Slowdown of U.S. Economic Growth. Westport, CT: Praeger, 1999. Print.
- Ehrenreich, Barbara. Nickel and Dimed: On (not) Getting by in America. New York: Metropolitan, 2001. Print.
- Freeman, Samuel. "Can Economic Liberties Be Basic Liberties?" Bleeding Heart Libertarians. N.p., 13 June 2012. Web. 20 Nov. 2015.
- Freeman, Samuel, "Original position", The Stanford Encyclopedia of Philosophy (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2014/entries/original-position/>.
- Keynes, John M. *The General Theory of Employment, Interest and Money*. London: Macmillan, 1973. Print.
- Khalifa, Rashad. *Quran: The Final Testament*. Fremont, CA: Universal Unity, Surah 62.9 Al-Jamu'a. 2000. Print.
- Kramer, Matthew H. "Review: Property and Justice by J. W. Harris." *JSTOR*. Cambridge University Press, Nov. 1997. Web. 15 Mar. 2015.
- Lochner v. New York. The Oyez Project at IIT Chicago-Kent College of Law. 19 March 2015. URL= http://www.oyez.org/cases/1901-1939/1904/1904_292.
- Locke, John, and C. B. Macpherson. *Second Treatise of Government*. Indianapolis, IN: Hackett Pub., 1980. Print.
- Marx, Karl, Friedrich Engels, and Jones G. Stedman. *The Communist Manifesto*. London: Penguin Books, 2002. Print.

- Nussbaum, Martha Craven. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Belknap, 2006. Print.
- Phillips, Michael J. How Many Times was Lochner-Era Substantive Due-Process Effective, 48 Mercer Law Review (1997).
- Piketty, Thomas. *Capital in the Twenty-First Century*. Cambridge Massachusetts: The Belknap Press of Harvard University Press, 2014. 422. Print.
- Pogge, Thomas, and Michelle Kosch. *John Rawls: His Life and Theory of Justice*. Oxford: Oxford UP, 2007. Print.
- Rawls, John, and Erin Kelly. *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard UP, 2001. Print.
- Rawls, John. *Political Liberalism*. New York: Columbia UP, 1993. Print.
- Rawls, John. *A Theory of Justice*. Rawls. Cambridge: Belknap, 1972. Print.
- Schmidtz, David. "Diminishing Marginal Utility and Egalitarian Redistribution", *The Journal of Value Inquiry* 34:2/3 (2000), pp. 263-272
- Shapiro, Carl and Stiglitz, Joseph E. 'Equilibrium Unemployment as a Worker Discipline Device', *American Economic Review*, 1984, 74, 433-44. 64.
- Stigler, George J. "Monopoly." *The Concise Encyclopedia of Economics*. Library of Economics and Liberty, n.d. Web. 1 Mar. 2015.
- Stilz, Anna. "Is The Free Market Fair?". *Critical Review* 26.3-4 (2014): 423-438. Print.
- Tomasi, John. *Democratic Capitalism: A Reply to Critics*. *Critical Review* Vol. 26, Iss. 3-4, 2014.
- Tomasi, John. *Free Market Fairness*. Princeton: Princeton UP, 2012. Print.
- Tomasi, John. "The Moral Case for Economic Liberty." 2014 Index of Economic Freedom: Promoting Economic Opportunity and Prosperity. The Heritage Foundation. N.p., n.d. Web. 1 Mar. 2015. URL= <<http://www.heritage.org/index/pdf/2014/book/chapter3.pdf>>.
- Tomasi, John. "Reply to Samuel Freeman: Thick Economic Liberty." *Bleeding Heart Libertarians*. N.p., 18 June 2012. Web. 21 Jan. 2015
- Vallentyne, Peter and van der Vossen, Bas, "Libertarianism", *The Stanford*

Encyclopedia of Philosophy (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2014/entries/libertarianism/>.

Waldron, Jeremy. "Homelessness and the Issue of Freedom." 39 UCLA L. Rev. 1991-1992. p.304. Web. 11 Mar. 2015.

Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2013/entries/rawls/>.

"WorldBlu - Freedom at Work." WorldBlu. N.p., n.d. Web. 10 Apr. 2015.